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# THE LAW OF COMPENSATION.

LONDON :  
PRINTED BY BUTTERWORTH & CO., CRANE COURT, E.C.

# PREFACE

TO THE SECOND EDITION.

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**I**N the Preface to the First Edition of this Work we said that it contained a complete collection of all the general statutory provisions relating to the acquisition of land by corporations, councils, and companies, and to the compensation to be paid to owners for the injury to their lands by the construction of works carried out by such public bodies. It was, too, up to July, 1895, a full record of all the cases which bore upon the Law of Compensation.

Since the original Edition was written over two hundred cases have been reported which bear directly and indirectly upon the subject matter of the book, while Parliament in the interval has also passed some seven or eight statutes relating thereto. These facts show conclusively that there is still much work to be done by the Legal Profession and others in connection with the compulsory acquisition of land and the compensation of persons injuriously affected. We are assured that the First Edition has proved useful, we hope that the present Edition—which contains,

we believe, the whole law in connection with this important subject—may be of equal or more service to the Profession.

The arrangement adopted in the First Edition has been adhered to. The Lands Clauses Consolidation Act, 1845, which may be regarded as the foundation of the modern Law of Compensation, has been placed first, the later Acts following in chronological order. The few statutes passed prior to 1845, which are still in force, have been placed in the Appendix, and also those which relate more particularly to London. In the Notes to the Lands Clauses Consolidation Act, 1845, the Authors have endeavoured to state clearly both the principles and the practice relating to the recovery of compensation, while the notes to the later Statutes deal with the cases decided under their special provisions, cross references being given.

Among the new Statutes relating to this subject are the Light Railways Act, 1896, the Housing of the Working Classes Acts, 1900 and 1903, the Railways (Electrical Power) Act, 1903, and sundry Acts giving additional powers to the Admiralty and War Office to take or interfere with land. There has also been a new departure in regard to compensation for injurious affection in connection with "tube railways"; the clause sanctioned by Parliament is set out in the notes to section 68 of the Lands Clauses Consolidation Act, 1845. Among other additional matter will

be found the judgments in *In re Ridell and the Newcastle and Gateshead Water Co.*, a previously unreported case dealing with compensation water and special adaptability.

In order to render the book more easy of reference a Table of Statutes has been added and the date has been given of each case cited except where the date forms part of the reference. The report of each case referred to in the Text is that from which the quote has been, for the most part, compiled. References to most of the other reports are given in the Table of Cases, but it should be remembered that the point under discussion may sometimes be omitted from some of the reports.

J. H. B. B.

C. E. A.

Temple,  
October, 1903.



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## ADDENDA AND ERRATA.

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- Page 66, line 32 from top. *Add* : An offer made in the notice under s. 38 cannot be withdrawn and may be accepted during the hearing of the case (*R. v. High Bailiff of Westminster, Ex parte London County Council*, [1903] 2 K. B. 189 ; 72 L. J. K. B. 600 ; 88 L. T. 834 ; 67 J. P. 302).
- Page 67, after line 13 from top. *Add* : If an owner wrongly require arbitration, and is awarded a sum in excess of what he has been offered, he is not entitled to the costs of the arbitration (*In re London and North Western Rail. Co. and Walker*, [1903] A. C. 289 ; 72 L. J. K. B. 578 ; 88 L. T. 705).
- Page 74, after line 30 from top. *Add* : Such an offer cannot afterwards be withdrawn (*R. v. High Bailiff of Westminster, Ex parte London County Council*, [1903] 2 K. B. 189).
- Page 88, line 35 from top. *Add* : If the offer has been made and not accepted, and a jury summoned, the claimant is entitled at any time before the verdict is given to accept the offer, and the jury in such a case should be directed to return a verdict for the amount of the offer (*R. v. High Bailiff of Westminster, Ex parte London County Council*, [1903] 2 K. B. 189).
- Page 109, line 7 from top. *For* 18 & 19 Car. 2, c. 8, *read* 18 & 19 Car. 2, c. 3.
- Page 118, line 2 from top. *Add* : *Gadkwar of Baroda v. Gandhi Kachrabhai Kasturchand* (1903), L. R. 30 Indian App. 60.
- Page 148, line 31 from top. *For* [1900] 1 Ch. 440 *read* [1901] 1 Ch. 440.
- Page 189, line 5 from foot. *For* *In re Burnett's Estate read* *In re Burnett's Estate*.
- Page 224, line 18 from foot. *For* [1895] 1 Ch. 571 *read* [1895] 2 Ch. 571.
- Page 235, line 14 from top. *For* [1898] 1 Ch. 241 *read* [1899] 1 Ch. 241.
- Page 249, after line 6 from foot. *Add* : In computing the three years, the day on which the Act was passed should be excluded (*Goldsmith's Co. v. West Metropolitan Rail. Co.*, 20 T. L. R. 7).
- Page 255, line 21 from foot. *For* *Smith v. Marshall read* *Marshall v. Taylor*.
- Page 256, line 15 from top. *For* *Foster v. London and North Western Rail. Co. read* *Foster v. London, Chatham and Dover Rail. Co.*
- Page 293, line 4 from foot. *Add* : If a railway company in making a level crossing raise the level of the road by slight inclined planes, there is no obligation on the company to repair the roadway on these planes (*West Lancashire Rural District Council v. Lancashire and Yorkshire Rail. Co.*, [1903] 2 K. B. 394 ; 72 L. J. K. B. 675 ; 89 L. T. 139 ; 51 W. R. 694).
- Page 383, line 12 from top. *For* *Parliamentary Documents Deposit Act, 1892, read* *Parliamentary Deposits and Bonds Act, 1892*.
- Page 451, line 10. The words "or not" should be in italics and included in the brackets.
- Page 497, line 15 from top. *For* 61 & 62 Vict. c. 51 *read* 61 & 62 Vict. c. 22.

# THE LAW OF COMPENSATION.

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## THE LANDS CLAUSES CONSOLIDATION ACT, 1845.

(8 & 9 VICT. c. 18.)

*An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the taking of lands for undertakings of a public nature.* [8th May 1845.]

[Whereas it is expedient to comprise in one general Act sundry provisions usually introduced into Acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: May it, therefore, please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That] (a) this Act shall apply to every undertaking authorised by any Act which shall hereafter be passed, and which shall authorise the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act.

Act to apply to all undertakings authorised by Acts hereafter to be passed.

(a) The words in brackets are repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67), s. 1. The Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 8, enacts that every section of an Act shall have effect as a substantive enactment without introductory words.

*Object of Act.*—Although the preamble has been repealed the statute will no doubt still be construed with reference to the object for which it was passed.

**Sect. 1.****NOTE.**

"It is to be borne in mind what the meaning of the Lands Clauses Consolidation Act was, and it cannot be more shortly described than by the preamble to the Act. I do not think it is possible to express the reason why that Act was passed, and its object, better than the legislature itself has expressed it in that preamble": *per* Lord BLACKBURN, *Metropolitan District Rail. Co. v. Sharpe* (1880), 5 App. Cas. 425, at p. 440. Prior to 1845 such provisions were repeated in each Act authorising the taking of land, and came to be known as common form, but as there were frequently variations, more or less minute, considerable confusion resulted.

**"This Act shall apply," etc.**—This Act applies only to undertakings authorised by Act of Parliament passed after May 8th, 1845.

*Undertakings authorised prior to that date* are not under the Act unless the authorising statute has been varied by a fresh Act passed subsequently, in which cases the Lands Clauses Consolidation Act would apply. Sir JOHN ROMILLY, M.R., said that he read this clause as meaning that "whenever there is an undertaking" for which "subsequently to the passing of the Lands Clauses Consolidation Act another Act passes which authorises the taking of other lands for that undertaking, then the Lands Clauses Consolidation Act applies to the whole undertaking as if it had always been applicable to it, so far as any of its provisions remain applicable or there is anything to be done under it" (*Lancashire and Yorkshire Rail. Co. v. Evans* (1851), 15 Beav. 322, 327; and see *Ex parte Eton College* (1850), 20 L. J. Ch. 1).

The later Act may, however, exclude the application of the Lands Clauses Consolidation Act either expressly or by implication. See s. 80, and cases there cited under heading "Or an Act incorporated therewith."

Difficult questions have arisen as to which Act is applicable when lands without the minerals have been purchased under an Act prior to 1845, and it has been subsequently necessary to assess the compensation for such of the minerals as the promoters may desire to have left unworked. See *R. (on the prosecution of Walker) v. London and North Western Rail. Co.*, [1899] 1 Q. B. 921, affirmed on appeal on another point, *London and North Western Rail. Co. v. Walker*, [1900] A. C. 109; and see also notes to s. 78 of the Railways Clauses Act, 1845, *post*.

**Undertakings or works of a public nature.**—As the Act was passed to consolidate provisions usually inserted in Acts authorising the taking of lands for undertakings of a public nature it does not apply to Acts which, although they allow the purchase or taking of land, are in their nature purely private Acts. Private Acts deal with purely personal matters, and usually contain provision that they shall not be deemed public. See Interpretation Act, 1889, s. 9. This Act applies to undertakings of a quasi-public kind authorised by what are called local and personal or local Acts.

Thus an Act passed for confirming and giving effect to an agreement for a lease by the Westminster Improvement Commissioners to the Westminster Palace Hotel Company was held not to incorporate the Lands Clauses Consolidation Act on the ground that their Act was in the nature of a private estate Bill, and expressly stated not to be a public Act. The hotel company were held, therefore, not to be bound to summon a jury to assess the amount of compensation due for obstructing ancient lights by building on the site so leased to them (*Wale v. Westminster Hotel Co.* (1860), 8 C. B. (N.S.) 276).

**"And this Act shall be incorporated," etc.**—This provision incorporates this Act in every Act to which it would apply. No special provision for its incorporation is therefore necessary. Local Acts usually contain such provision, and numerous public general Acts also incorporate it, either wholly or in part or with variations.

Those clauses of the public general Acts which incorporate the compulsory sections of the Lands Clauses Consolidation Acts will be found set out, *post*.

The Lands Clauses Consolidation Act, 1845; the Lands Clauses Consolidation Acts Amendment Act, 1860; the Lands Clauses Consolidation Act, 1869;

the Lands Clauses (Umpire) Act, 1883 ; and the Lands Clauses (Taxation of Costs) Act, 1895, are construed as one, and are, therefore, incorporated together. By virtue of s. 23 of the Interpretation Act, 1889, they may be referred to collectively as the "Lands Clauses Acts."

**Sect. 1.**

**NOTE.**

"Save so far as they shall be expressly varied."—In construing the Acts together, the object of the Lands Clauses Consolidation Act is to be borne in mind. It is to be followed unless the special Act by express words or necessary intendment varies or excepts it. It is not necessary that there should be express words saying this particular section or provision shall not apply, but there must be something indicating an express intention. A mere variation from the ordinary type or form would not be sufficient to prevent this clause applying, but a variation showing that the provision was inapplicable would have the same effect as if it were expressly varied (*Metropolitan District Rail. Co. v. Sharpe* (1880), 5 App. Cas. 425 ; *Ex parte Rayner* (1878), 3 Q. B. D. 446 ; *R. v. Lord Mayor of London* (1867), L. R. 2 Q. B. 292).

If the particular Act gives a rule on the subject the expression of that rule would amount to an excepting of the subject-matter of the rule out of the Lands Clauses Consolidation Act. If the rule, however, applies only to a portion of the subject the Lands Clauses Consolidation Act will remain incorporated as to the other and separate part of the same subject (*In re Westminster Estate* (1864), 4 De G. J. & S. 232).

Thus where an improvement Act authorised certain improvements and contained provisions for compensation in connection with these, and also contained provisions authorising other improvements without specially providing for compensation in respect of these latter, it was held that the fact that it was expressly given in the former cases was not inconsistent with the intention that it should be given in the other cases by virtue of s. 68 of the Lands Clauses Consolidation Act (*R. v. St. Luke's, Chelsea* (1871), L. R. 7 Q. B. 148).

As to incorporation and construction, see ss. 5, 34, 80.

And with respect to the construction of this Act and of Acts to be incorporated therewith, be it enacted as follows :

**Interpretations in this Act :**

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed which shall authorise the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid ; and the word "prescribed" used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used ; and the expression "the works" or "the undertaking" shall mean the works or undertaking, of whatever nature, which shall by the special Act be authorised to be executed ; and the expression "the promoters of the undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking.

**"Special Act:"**

**"Prescribed:"**

**"The works:"**

**"Promoters of the undertaking."**

**Sect. 2.****NOTE.**

**The "special Act."**—In some public general Acts provision is made as to what is to be deemed to be the special Act. It is usually either the Act itself or the Act and any Act confirming any order made in pursuance thereof. In others there is no such provision. In *Hill v. Haire*, [1899] 1 I. R. 87, the provisional order was held to be included in the meaning of "the special Act," although that expression was defined merely as being the Military Lands Act, 1892 (see *post*).

**The "promoters of the undertaking."**—By s. 7 of the Lands Clauses Consolidation Acts Amendment Act, 1880 (23 & 24 Vict. c. 106), his Majesty's principal Secretary of State for the time being shall be deemed to be "the promoters of an undertaking" within the meaning of the Act.

**Interpreta-  
tions in this  
and the  
special Act :**

**3.** The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction ; (that is to say,)

- Number :** Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number :
- Gender :** Words importing the masculine gender only shall include females :
- "Lands :"** The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure :
- "Lease :"** The word "lease" shall include an agreement for a lease :
- "Month :"** The word "month" shall mean calendar month :
- "Superior courts :"** The expression "superior courts" shall mean her Majesty's superior courts of record at Westminster or Dublin, as the case may require :
- "Oath :"** The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath :
- "County :** The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town :
- "The sheriff :"** The word "sheriff" shall include under sheriff, or other legally competent deputy ; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate ; and if the lands in question, being the property of
- "The clerk of the peace :"**

**Sect. 3.**

one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate :

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognisance of any such justice shall arise, and who shall not be interested in the matter ; and where such matter shall arise in respect of lands, being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter ; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together :

Where under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking :

The expression "the Bank" shall mean the Bank of England where the same shall relate to moneys to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland where the same shall relate to moneys to be paid or deposited in respect of lands situate in Ireland.

"In this and the special Act."—In certain of the Acts which incorporate the Lands Clauses Acts some of the above-mentioned words are defined in a manner different from those given here. In these cases the definitions of the incorporating Act will be the accepted meanings, as the words here defined are only to have these meanings if the context is not repugnant, and the application of the Lands Clauses Consolidation Act will not be altered by such different meaning (*Clark v. School Board for London* (1874), L. R. 9 Ch. 120). And see cases below to note "Lands."

Throughout the Act itself these meanings are to be accepted only when there is nothing repugnant in the subject or context. Thus, in s. 39, the word "sheriff" means the high sheriff, and not as in this definition (*Worsley v. Devon Rail. Co.* (1851), 16 Q. B. 539).

"The word 'lands'."—The Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3, has enacted that in every Act passed after 1850, unless the contrary

**Sect. 3.****NOTE.**

intention appears, "the expression 'land' shall include messuages, tenements, and hereditaments, houses and buildings of any tenure." This is practically a re-enactment of a part of Lord Brougham's Act (13 & 14 Vict. c. 21), s. 4, which the present Interpretation Act repeals, and it does not appear to affect the decisions bearing upon this point.

**"Messuage."**—This word technically means a dwelling-house, with the outbuildings adjoining: the orchard, garden, and curtilage—practically whatever is annexed to and enjoyed with the house for its more convenient occupation. See *Shep. Touch.*, p. 94, and s. 92, *post*, note "House."

**"Lands."**—The expression "lands, tenements and hereditaments" was, in earlier English law, used in opposition to "goods and chattels," a distinction somewhat similar to our modern terms of real and personal property. By "lands" is meant not only the surface of the earth, but everything under it as mines and quarries, and everything over it as water, buildings, trees and air. A grant of a lake to be effective must be of so many acres of land covered with water. The legal maxim is *cujus est solum ejus est usque ad cælum* (*Shep. Touch.*, p. 90; 2 *Bla. Com.*, p. 18). And as to mines being included, see *Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559, 568.

**"Tenements."**—Although this word is used as synonymous with *messuage*, it has a wider technical meaning, viz., everything that could be the subject of feudal tenure, and includes, besides land, rights of turbary, rights of common, and similar rights (2 *Bla. Com.*, pp. 16, 17).

**"Hereditaments"** was the word of largest extent, and included all that could be inherited, "corporeal or incorporeal, personal or mixt." It included nearly every tenement, and also various other rights over land. Corporeal hereditaments imply the possession of the land; incorporeal a right over land in possession of another. BLACKSTONE says the incorporeal are principally of ten sorts: "advowsons, tithes, commons, ways, offices, dignities, franchises, corodies or pensions, annuities and rents" (2 *Bla. Com.*, p. 21). There are, however, other rights over land which are hereditaments. Tunnels are usually corporeal hereditaments as they are interests in land implying possession, and not merely rights over land. See *Fowler v. Metropolitan Rail. Co.*, [1893] A. C. 416.

**"Of any tenure."**—There has been some conflict in judicial opinion as to the extent to which these words affected the meaning of hereditaments, and they have been by some authorities construed as limiting the meaning in such a way as to exclude those which were incorporeal as not being of any tenure. See *Pinchin v. London and Blackwall Rail. Co.* (1854), 5 De G. M. & G. 851, 861; *In re Metropolitan District Rail. Co. and Cosh* (1880), 13 Ch. D. 607, 616. The point, however, may now be taken as decided, the House of Lords having unanimously expressed an opinion that incorporeal hereditaments are included in the definition, and that these words are to be read as "of whatever tenure if any." The context and the special Act must, however, be regarded to discover the extent of the meaning in each particular instance. In many leading clauses of the Lands Clauses Consolidation Act (as, for example, the eighteenth), the word "lands," by reason of the context, is limited to corporeal hereditaments and will not include easements (*Great Western Rail. Co. v. Swindon and Cheltenham Rail. Co.* (1884), 9 App. Cas. 787, 800, 808). It is limited also in many cases so as not to include strata of land unless special power is given to the undertakers (*Hill v. Midland Rail. Co.* (1882), 21 Ch. D. 143). See further, ss. 18, 68.

**"Superior courts."**—These will now mean the Supreme Court of Judicature in England, including His Majesty's High Court of Justice and His Majesty's Court of Appeal, and the Supreme Court of Judicature in Ireland, including His Majesty's High Court of Justice in Ireland, and His Majesty's Court of Appeal in Ireland (36 & 37 Vict. c. 66, ss. 3, 4, and 40 & 41 Vict. c. 57, ss. 4, 5).

**"Oath."**—Every person is now permitted to affirm who objects to be sworn and states as the ground of such objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief (Oaths Act, 1886 (51 & 52 Vict. c. 46), s. 1).

**"Sheriff."**—In the enactments throughout the Act relating to the reference to a jury, the provisions applicable to a sheriff apply to every coroner or person lawfully acting in his place (s. 40).

Within the city and liberty of Westminster, the high bailiff of such city and liberty, or his deputy, shall be deemed to be substituted for the sheriff in the same enactments (Lands Clauses Consolidation Act Amendment Act, 1869 (32 & 33 Vict. c. 18), s. 3).

**"Where such lands shall be situate."**—Where the lands injuriously affected are within a city and the works causing the injury are in the county, the jury of the city are competent to try the question, even when the injury occasioned is by cutting off communication on the county side with a ferry over the river, the ferry being appurtenant to the land in the city, the boundary being in the midst of the river (*R. v. Great Northern Rail. Co.* (1849), 14 Q. B. 25).

**"Justices."**—The territorial jurisdiction of justices is limited to the area or place for which their commission is issued. Judicial duties cannot be exercised outside such place or area, but ministerial duties, such as administering oaths for affidavits, can be so exercised. See *Kerr v. Ailsa* (1854), 1 Macq. H. L. 736.

**"Who shall not be interested in the matter."**—The general principle is *nemo debet esse iudex in propria causa*. Any direct pecuniary interest, however small, will disqualify. Thus, where justices who were shareholders in a railway company, convicted a man for travelling with a wrong ticket on that railway, they were held to be disqualified (*R. v. Hammond* (1863), 9 L. T. 423). And see *R. v. Commissioners of Sewers for Fobbing* (1886), 11 App. Cas. 450; *R. v. Lee* (1882), 9 Q. B. D. 394; *R. v. Guisford*, [1892] 1 Q. B. 381.

The pecuniary interest must be direct, and, if indirect, it will not disqualify unless likelihood of bias is shown; thus an interest, depending upon the completion of a parliamentary arrangement between certain companies is too remote (*R. v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1867), L. R. 2 Q. B. 336). And see *R. v. Rand* (1866), L. R. 1 Q. B. 230.

The fact that justices are shareholders in shipping companies, the ships of which were insured by associations that were members of a confederation to which the prosecutor was agent is not sufficient to disqualify (*R. v. Mackenzie*, [1892] 2 Q. B. 519).

If the magistrate has no pecuniary interest, he will be disqualified if he has such a substantial interest other than pecuniary in the result of the hearing as to make it likely he will have a bias, but not otherwise. The mere fact that he has been subpoenaed as a witness, and has advised a settlement will not disqualify (*R. v. Farrant* (1887), 20 Q. B. D. 58; *R. v. Tooke* (1884), 22 W. R. 753).

If real likelihood of bias is shown the justice will be disqualified; thus, in a case where a municipal corporation had acquired some licensed premises for the purposes of a street improvement, and had entered into an agreement with a brewery company, one of the conditions of which was that the brewery company should pay a sum of money to the corporation in the event of their obtaining a license for certain other premises, justices of the borough who, as members of the corporation, had taken an active part in the negotiations, were held disqualified from sitting to hear the application for the license (*Re v. Sunderland JJ.*, [1901] 2 K. B. 357, overruling *R. v. Stockport JJ.* (1896), 60 J. P. 552).

By certain statutes, justices are expressly given power to hear and determine certain matters, although they have an interest in the result. In these cases the pecuniary interest is small, as, for example, the justice may be a ratepayer

**Sect. 3.****NOTE.**

in the parish in connection with which a question is raised. See Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 158 (2). But notwithstanding such acts, the justices will be disqualified if there is unmistakable bias shown, as, for example, by taking active part in proceedings prior to the trial (*R. v. Meyer* (1875), 1 Q. B. D. 173; *R. v. Allen* (1864), 33 L. J. M. C. 98; *R. v. Henley*, [1892] 1 Q. B. 504; *R. v. London County Council*, [1892] 1 Q. B. 190; *R. v. Lee* (1882), 9 Q. B. D. 394; *R. v. St. Albans* (1882), 9 Q. B. D. 454). If there is strong probability of bias, as where the justice is an appellant against a rate, he is disqualified from hearing other appeals of a similar nature (*R. v. Yarmouth JJ.* (1882), 51 L. J. M. C. 39).

The disqualification of a justice on the ground of interest may be waived by the parties, as the proviso that he shall not be interested is merely declaratory of the common law, and not obligatory, and at common law the objection could always be waived. Such waiver will be presumed if, after knowledge of interest, the parties either request the justice to act, or acquiesce in his acting, and in order to disturb his ruling the party applying must fully deny knowledge of such interest (*Wakefield Local Board v. West Riding and Grimsby Rail. Co.* (1865), L. R. 1 Q. B. 84, upon the same words in the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 3). And see, as to the common law, *R. v. Richmond JJ.* (1860), 8 Cox C. C. 314; *R. v. Kent JJ.* (1880), 44 J. P. 298, and Stone's Justices' Manual, under title "Practice, Interested Justices."

If the parties acquiesce under a misunderstanding as to his interest, the order will be quashed if the conduct of the justice shows real bias. Thus, a justice at a railway rating appeal was not objected to, as he was believed to be merely an *ex officio* member of the board of guardians, but it was afterwards discovered that he had been actively engaged at meetings defending the appeal. The order was set aside on the ground of probability of bias (*R. v. Cumberland JJ.* (1888), 58 L. T. 491).

"Two justices."—Any one of the magistrates of the metropolitan police courts, and every stipendiary magistrate for any county, borough or place, have power to do alone what may be done by two justices of the peace (21 & 22 Vict. c. 73, s. 1; 2 & 3 Vict. c. 71, s. 14; and 42 & 43 Vict. c. 49, s. 20 (10)).

The expression "two justices" means at least two, and the proceedings are not vitiated by there being more than two present (*R. v. Rochdale Improvement Commissioners* (1856), 2 Jur. (N.S.) 861).

"Owner."—The persons who are enabled to sell and convey lands are stated in s. 7.

**Short title  
of the Act.**

**4.** In citing this Act in other Acts of Parliament, and in legal instruments it shall be sufficient to use the expression "the Lands Clauses Consolidation Act, 1845."

By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 23, it is provided that in any Act, public, local and personal, or private, passed after January 1st, 1890, unless the contrary intention appears, the expression "Lands Clauses Acts" shall mean—

As respects England and Wales, the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), the Lands Clauses Consolidation Acts Amendment Act, 1860 (23 & 24 Vict. c. 106), the Lands Clauses Consolidation Act, 1869 (32 & 33 Vict. c. 18), and the Lands Clauses (Umpire) Act, 1883 (46 & 47 Vict. c. 15), and any Acts for the time being in force amending the same. The only amending Act is the Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11).

"In legal instruments."—Section 35 of the Interpretation Act, 1889, extends this to "in any Act, instrument or document."

**5.** And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed some portion only of the provisions of this Act: Be it therefore enacted, that for the purpose of making any such incorporation it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated, (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter,) shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

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Form in which portions of this Act may be incorporated with other Acts.

By the Interpretation Act, 1889, it is enacted that in any Act passed after January 1st, 1890, a description or citation of a portion of another Act shall, unless the contrary intention appears, be construed as including the word section, or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation (52 & 53 Vict. c. 63, s. 35 (3)).

**"WORDS INTRODUCTORY TO THE ENACTMENT WITH RESPECT TO SUCH MATTER."**

*The different headings with the clauses under them are as follows :*

**SECTS.**

- 6—15. The purchase of lands by agreement.
- 16—68. The purchase and taking of lands otherwise than by agreement.
- 69—90. The purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title.
- 81—83. The conveyances of land.
- 84—91. The entry upon lands by the promoters of the undertaking.
- 92. As to selling part of a house.
- 93—94. Small portions of intersected land.
- 95—98. Copyhold lands.
- 99—107. Copyhold lands, being common or waste lands.
- 108—114. Lands subject to mortgage.
- 115—118. Lands charged with any rent service, rentcharge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for.
- 119—122. Lands subject to leases.
- 123. Limit of time for compulsory purchase.
- 124—126. Interests in land which have by mistake been omitted to be purchased.
- 127—132. Lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof.
- 133. Land tax and poor's rate to be made good.
- 134. Service of notices upon company.
- 135. Tender of amends.
- 136—149. The recovery of forfeitures, penalties, and costs.
- 150—151. The provision to be made for affording access to the special Act by all parties interested.

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## NOTE.

The clauses relating to the different subjects were thus grouped together so that they might readily be referred to in the special Acts.

In order to avoid the necessity of inserting *seriatim* the clauses to be incorporated or to be excluded in an Act which it is intended shall incorporate part only of the provisions, the partial incorporations may be made by incorporating or excluding in the mass the sections falling under a particular heading or title.

If the words of the heading are used in the special Act either to include or exclude the enactments dealing with any matter, all the sections under that heading must be deemed to be included or excluded, as the case may be. Thus, an Act which incorporates the Lands Clauses Consolidation Act, 1845, but excludes the provisions of that Act "relating to the purchase and taking of lands otherwise than by agreement" thereby excludes all the sections from and to and including ss. 16—68; compensation, therefore, for the injurious affecting of lands cannot be recovered on the basis that a 68 is incorporated (*Ferrar v. Commissioners of Sewers in the City of London* (1869), L. R. 4 Ex. 227, followed in *Dungey v. Lord Mayor of London* (1869), 38 L. J. C. P. 298).

The same principle had been laid down in *R. v. Lord Mayor of London* (1867), L. R. 2 Q. B. 292, where it was held that an Act, excepting provisions in the same manner as in the above cases, excluded only ss. 16—68, and that the other clauses which relate to the purchase of land otherwise than by agreement not coming under that heading were not excepted.

If, however, the local Act does not use the words of the heading, the same rule does not apply; thus, an Act which excepts so much of the Lands Clauses Consolidation Act, 1845, as relates *exclusively* to the purchase and taking of lands by compulsion does not thereby except a 68, as that section, although inserted among the clauses which relate to the taking of lands by compulsion, does not relate *exclusively* to the taking of lands by compulsion. See *per Lord CRANWORTH* in *Broadbent v. Imperial Gas Light Co.* (1857), 7 De G. M. & G. 436, 447; *S. C.* in the Lords (1859), 7 H. L. Cas. 600, where the point was not taken.

Under the Elementary Education Act, 1870, which incorporates the Lands Clauses Acts, but provides for certain additional requirements before the authority can put in force the powers of these Acts with respect to the purchase and taking of land otherwise than by agreement, it has been held that the authority may on land acquired by agreement, do acts injuriously affecting adjoining property without complying with these requirements, and that the owner's remedy is to claim compensation under a 68 of this Act. See *Kirby v. School Board for Harrogate*, [1896] 1 Ch. 437.

*Construction.*—Much diversity of opinion has existed as to the effect to be given to these introductory headings in construing the clauses under them. The general result is that they are to be regarded as something more than marginal notes, being in the nature of preambles, but their effect would appear to be a matter of construction in each particular case.

In *Hammersmith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171, Lord CHELMSFORD (p. 203), speaking of the headings in the Railways Clauses Act, said that they "may be usefully referred to, to determine the sense of any doubtful expression in a section ranged under a particular heading." But in the same case, Lord CAIRNS (p. 216) said that "the framing of the Lands Clauses Act shows that it is even dangerous to trust to the headings which occur at the commencement of these *fasciculi* of clauses, for the purpose of restraining or confining the natural operations of the words which you find in the various clauses under these headings."

In the *Eastern Counties Rail. Co. v. Marriage* (1860), 9 H. L. Cas. 32, the subject was fully discussed. The opinions of the common law judges were taken by the lords, and there was much diversity as to the effect to be given to these headings. The point at issue was as to whether the words "such lands" in s. 94 of the Lands Clauses Consolidation Act, 1845, referred to the lands mentioned in the previous section or in the heading to the two sections. In the result, it was held that the lands referred to were those in the heading on the ground that such reading gave the more reasonable construction, but no general principle was laid down.

See as to headings of this kind in other statutes, *Bryan v. Child* (1850), 5 Ex. 368, 374; *Latham v. Lafone* (1867), L. R. 2 Ex. 115, 119; *Lang v. Kerr* (1878), 3 App. Cas. 529, 536.

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NOTE.

As to incorporation and construction, see s. 1.

And with respect to the purchase of lands by agreement, be it enacted as follows :

This heading includes ss. 6—15. As to the effect of heading, see note to s. 5.

6. Subject to the provisions of this and the special Act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorised to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

Power to  
purchase  
lands by  
agreement.

**"The promoters of the undertaking."**—See definition in s. 2. They are the parties empowered by the special Act to execute the undertaking.

Sometimes agreements for the purchase of lands are made by the promoters of the company prior to its incorporation. At common law such agreements are not binding on the company, and the company cannot ratify them so as to pass the liability from the promoters (*Kelner v. Baxter* (1866), L. R. 2 C. P. 175), but the company could of course enter into a new contract on the same terms as the old and in substitution for it with the consent of the parties.

In the case of railways to be constructed under the Railways Construction Facilities Act, 1864 (27 & 28 Vict. c. 121), it is enacted by s. 30 of that Act that :

"Contracts relative to the purchase or taking of lands for the railway, entered into by the promoters before the incorporation of the company by the certificate, shall be as binding on the company as if they had been entered into by the company" (see *post*).

The promoters in this section means the persons or company intending to apply for a certificate under the Act. For cases on this section see Browne and Theobald's Law of Railways, 3rd ed., p. 536.

These agreements must, however, be of such a nature that the company could itself have entered into, otherwise the company will not be bound (*Shrewsbury v. North Staffordshire Rail. Co.* (1865), L. R. 1 Eq. 593).

An agreement for the purchase of land made by promoters before incorporation in pursuance of this section, is not within the Lands Clauses Act, even although the Act authorising the undertaking incorporates it, and costs of a reference to a surveyor under the agreement, if not provided for in the agreement, could not be recovered from the company (*Catling v. Great Northern Rail Co.* (1869), 18 W. R. 121).

**"To agree."**—The agreement must conform to the general law, and must be in writing and stamped. At the common law corporate bodies can contract only by means of their common seal, and contracts made with them which are not sealed will be invalid and will not bind them (1 Bla. Com. 475; *Finlay v. Bristol and Exeter Rail. Co.* (1852), 21 L. J. Ex. 117).

Equity, however, where there has been part performance in which the corporation has acquiesced will, if the remedy is applicable, decree specific

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performance (*Laird v. Birkenhead Rail. Co.* (1859), 29 L. J. Ch. 218; *Wilson v. West Hartlepool Rail. Co.* (1865), 34 L. J. Ch. 241; *London and Birmingham Rail. Co. v. Winter* (1840), Cr. & Ph. 57; and see *Crompton v. Varna Rail. Co.* (1872), L. R. 7 Ch. 562).

There have been various statutory exceptions to this rule.

The Companies Clauses Act, 1845 (8 & 9 Vict. c. 16), s. 97, enacts as follows:

"The power which may be granted to any such committee [i.e., committee of directors] to make contracts, as well as the power of the directors to make contracts, on behalf of the company, may lawfully be exercised as follows; (that is to say,)

"With respect to any contract which, if made between private persons, would be by law required to be in writing, and under seal, such committee or the directors may make such contract on behalf of the company in writing, and under the common seal of the company, and in the same manner may vary or discharge the same:

"With respect to any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, then such committee or the directors may make such contract on behalf of the company in writing, signed by such committee or any two of them, or any two of the directors, and in the same manner may vary or discharge the same:

"With respect to any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, such committee or the directors may make such contract on behalf of the company by parol only, without writing, and in the same manner may vary or discharge the same."

Such contracts shall be binding upon the company and their successors.

For companies incorporated under the Companies Act, 1862, a similar provision exists in the Companies Act, 1867 (30 & 31 Vict. c. 131), s. 37.

Contracts with district councils are regulated by the Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 173 and 174.

Under the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 3 (9), parish councils are made corporate bodies, but without a common seal. Provision is made to enable them to contract under the hands and seals, if required, of the chairman and two other members of the council. In parishes where there is no council the chairman and overseers are a body corporate with power to hold land and to contract under their hands and seals (*ibid.*, s. 19 (6)).

**Costs.**—Sections 81 and 82 provide that in case of persons not under disability, the costs connected with the conveyance, and the verifying of the title shall be paid by the promoters (see notes to these sections). As this does not include the costs of preliminary negotiation, provision for the payment of the costs should be made in the agreement. Prideaux thinks it is desirable to have an express clause dealing with all costs, as in some cases the statutory enactment may be excluded (1 Prideaux, 117).

Thus, it is not unfrequent in these agreements that the question of price to be paid is referred to a surveyor. As this reference is a reference under the agreement and not under the Act, the Act will not apply to the costs. It was decided that s. 1 of the Lands Clauses Consolidation Act, 1869, which provided for the taxing of costs of arbitrations, did not apply to references under these agreements (*Doulton v. Metropolitan Board of Works* (1870), L. R. 5 Q. B. 333, followed in *Wombwell v. Corporation of Barnsley* (1877), 36 L. T. (N.S.) 708; see also *Catling v. Great Northern Rail. Co.* (1869), 18 W. R. 121). That section is repealed by the Lands Clauses (Taxation of Costs) Act, 1895, *post*, but s. 1 thereof is to the same effect.

**"Owners."**—See definition, ss. 3 and 7.

**"Lands."**—See definition, s. 3 and notes. In this section the word may be given its widest signification, and it would appear that the company can purchase, if the landlord is willing, any stratum of land, or land exclusive of

mines, or any grant of an easement. In *Great Western Rail. Co. v. Swindon and Cheltenham Rail. Co.* (1884), 9 App. Cas. 787, at p. 801, Lord WATSON said: "I can see no reason for holding that in section 7 and other clauses of the Act which relate to purchase by agreement, the word 'lands' must be restricted to corporeal hereditaments. If a landowner is willing to sell a right of use, and such a right is sufficient for all purposes sanctioned by the special Act, I cannot conceive that it was the intention of the legislature to enact that the landowner should not sell or the company purchase, that limited right."

**Mines.**—An agreement for the sale of lands will include all above and below the surface, and transfer the mines unless expressly excepted. In the case of railways and waterworks, however, by the word "lands" the mines do not pass unless expressly mentioned. See Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 77, *post*, and the Waterworks Clauses Act, 1847, ss. 18—27, *post*, and *Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559, 568. Private Acts sometimes contain a similar proviso.

**"By the special Act authorised to be taken."**—Two conditions are necessary to make an agreement for sale valid under this section.

1. The land must be authorised to be taken by the special Act.

2. And it must be required for the purposes of such Act.

The cases as to both these conditions are collected in the notes to s. 18, *post*.

Sections 12—15 deal with the purchase of land for extraordinary purposes.

**"A consideration in money."**—This may be either a gross sum or an annual rentcharge. See s. 10, and 23 & 24 Vict. c. 106, ss. 1, 2.

As to the rights of unpaid vendors, see s. 85 of this Act, *post*.

As to interest, see below, "Construction of agreements."

**"And of all estates and interests."**—As undertakers of works require usually the absolute ownership of the land, it is necessary for them to acquire the fee simple. If the fee has been cut up into numerous lesser estates and interests, it will be necessary to purchase or acquire all these estates.

**"Construction of agreements."**—These agreements must, of course, be construed in the ordinary way and be subject to the general law governing agreements and conveyances of real property. Thus, in a county with a local land registry, it is usual to register these conveyances, and this appears the proper course. See 2 Dart's Vendors and Purchasers (6th ed.), p. 770. In districts where compulsory registration is in force the provisions of the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), should not be overlooked.

The following are cases arising more particularly out of the Lands Clauses Consolidation Acts:

**Time for completion.**—If a company contract for the purchase of land, the contract entered into by them must be performed and completed within a reasonable time in the same way as contracts entered into by other persons, and they are not entitled to insist that they may complete, whenever they want the land, provided the contract is completed within the time limited for exercising their compulsory powers (*Baker v. Metropolitan Rail. Co.* (1862), 31 Beav. 504).

If, however, a landowner sell certain land to a railway company and agree that if the company should "require any additional land of the vendor, adjoining or near the land sold for the purposes of the railway and works, the same should be taken and paid for by the company" at a certain price, then the time within which this option may be exercised is not limited to the time during which the compulsory purchase might take place, but it may be exercised at any time before the period limited by the special Act for the completion of the works (*Rangeley v. Midland Rail. Co.* (1868), L. R. 3 Ch. 306). See same point in *Kemp v. South Eastern Rail. Co.* (1872), L. R. 7 Ch. 364, and cf. *Tiverton and North Devon Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480.

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*Specific performance.*—Not infrequently in agreements the price is left to be settled by a reference or arbitration. Until it is fixed, the relation of vendor and purchaser does not arise, and if it is at the option of the vendor to choose the form of reference, and he dies before having exercised the option, there is no contract which the court can enforce (*Morgan v. Milman* (1853), 3 De G. M. & G. 24).

But when the price is fixed and the contract complete, the court will entertain a suit for specific performance (*Regent's Canal Co. v. Ware* (1857), 23 Beav. 575).

In the case of leaseholds, the company will be held bound to accept an assignment with the usual covenants of indemnity (*Harding v. Metropolitan Rail. Co.* (1872), L. R. 7 Ch. 154).

Where an owner of land contracted to sell land and a dispute arose as to his interest therein, and he claimed specific performance, the promoters could not in that action claim to be allowed to enter into possession on paying the price into court. They must proceed under the Act by the prescribed method (*Bygrave v. Metropolitan Board of Works* (1887), 37 Ch. D. 147).

Where a vendor allows the promoters to take possession of land under agreement, and makes provision for interest to be paid on the balance of the purchase money, and there is delay in completing, he is not entitled in an action for specific performance to have the balance paid into court (*Pryse v. Cambrian Rail. Co.* (1867), L. R. 2 Ch. 444). See the same principle in *Boddington v. Great Western Rail. Co.* (1849), 13 Jur. 144.

The court will not, in an action by the landowner against the promoters, decree specific performance until the title has been investigated, but will refer it to chambers for that purpose (*Gunston v. East Gloucestershire Rail. Co.* (1868), 18 L. T. (n.s.) 8).

Usually contracts for specific performance will not be granted against a company to execute works; but if a landowner has withdrawn his opposition and sold land in consideration of a railway doing certain works, specific performance will be granted (*Lytton v. Great Northern Rail. Co.* (1856), 2 Kay & J. 394). See *Webb v. Direct London and Portsmouth Rail. Co.* (1851), 9 Hare, 129; *Eastern Counties Rail. Co. v. Hawkes* (1855), 24 L. J. Ch. 601. On the principles upon which the courts act in granting specific performance of contracts under statutory powers, see *Inge v. Birmingham and South Western Rail. Co.* (1853), 3 De G. M. & G. 658; *Haynes v. Haynes* (1861), 1 D. & S. 426.

If the legislature prescribes formalities to be observed by parties contracting *inter se*, and one endeavours to avail himself of the want of such forms to postpone or avoid the completion of a contract entered into, the court will itself ascertain whether the intentions of the legislature have in substance been complied with, and if they have, will carry the contract into effect, or by *mandamus* compel the observance of the formalities (*Baker v. Metropolitan Rail. Co.* (1862), 32 L. J. Ch. 7; and see s. 9, *post*).

If the landowner can be compensated by damages, specific performance will not be awarded (*Ingram v. Midland Rail. Co.* (1860), 3 L. T. (n.s.) 533). Nor if the contract is too vague (*Tillett v. Charing Cross Rail. Co.* (1859), 28 L. J. Ch. 863).

In a suit for specific performance of an agreement by a railway company to purchase land from trustees, the persons beneficially entitled are not necessary parties (*Potts v. Thames Haven Dock and Rail. Co.* (1851), 15 Jur. 1004).

See further as to the rights of an unpaid vendor, s. 85, *post*.

*Interest.*—It is advisable for the vendor to stipulate in his agreement that interest shall be payable after the date fixed for completion.

If the price is to be fixed by a third party, the interest will not be payable till the price is ascertained, and the outgoings must be paid by the vendor until that date (*Catling v. Great Northern Rail. Co.* (1869), 18 W. R. 121).

But if the company take possession before the price is fixed, then interest at 4 per cent. is payable from the date they take possession as in the case of any other purchaser (*Rhys v. Dare Valley Rail. Co.* (1874), L. R. 19 Eq. 93;

*In re Belfast Water Commissioners, Ex parte Dalway* (1884), 15 L. R. Ir. 13; and see general principle in *Birch v. Joy* (1852), 3 H. L. Cas. 565).

In a case where the company had taken possession, the price being afterwards fixed by a jury, and a conveyance executed in consideration of the sum so found, it was held that, notwithstanding the conveyance, the owner was entitled to be paid an additional sum for interest from the date when possession was taken to the date of payment of the sum found (*In re Baltimore Extension Rail. Co., Limited, Ex parte Daly*, [1895] 1 I. R. 169).

On the other hand, if the promoters do not take possession after the price is fixed, they are liable to pay interest at 4 per cent. from the time when they might have taken possession or entered into the receipt of rents on a good title being shown (*Re Piggott and the Great Western Rail. Co.* (1881), L. R. 18 Ch. D. 146; *In re Ecclehill Local Board* (1879), 13 Ch. D. 365, disapproved of; and see *Spencer-Bell v. London and South Western Rail. Co.* (1885), 33 W. R. 771).

Where a railway company give notice of their intention to acquire minerals to be left unworked, interest is payable on the purchase money from the date of such notice (*Fletcher v. Lancashire and Yorkshire Rail. Co.* (1902), 18 T. L. R. 417).

Where a sum of money is paid into court under the award of an arbitrator, and on appeal a larger sum is awarded, interest at 4 per cent. from the date of the first payment to the date of the second is payable on the difference (*In re Shaw and the Corporation of Birmingham* (1884), 27 Ch. D. 614; *Re Naran and Kingscourt Rail. Co.* (1876), Ir. R. 10 Eq. 113).

A purchaser who before completion of the purchase exercises acts of ownership over the land agreed to be purchased, must pay interest on the purchase money pending delay in the completion of the contract, although the delay is caused by the vendor and the land is untenanted, so that he received no rents and profits from it (*Ballard v. Shutt* (1880), 15 Ch. D. 122; and see *Blount v. Great Southern and Western Rail. Co.* (1851), 2 Ir. Ch. R. 40).

But if the purchase money has been lying idle, and after notice to vendor completion is delayed by his default, he will not be allowed interest (*Regent's Canal Co. v. Ware* (1857), 23 Beav. 575).

An owner sold to a railway company a house where he carried on the business of a licensed victualler, and the purchase money was to be paid at a fixed date or earlier, as the company should choose, possession to be given on payment, they paying interest at 5 per cent. in the meantime, and the vendor was to remain as tenant to the agreed date at a rent, if possession was not taken. On the agreed date the money was not paid, and the owner was decreed specific performance and interest from the agreed date, and the company was held not entitled to any allowance by way of occupation rent, on the ground that the company had not shown that he had acquired benefit from the occupation (*Leggott v. Metropolitan Rail. Co.* (1870), L. R. 5 Ch. 716).

If the occupation has been beneficial, a fair rent will be allowed (*Metropolitan Rail. Co. v. Defries* (1877), 2 Q. B. D. 387).

If the company agree to pay the price and interest from date of delivery of abstract to date of completion, but before completion pay the money into court under s. 69, the interest will cease to run from the date when the money is paid into court (*Leues v. South Wales Rail. Co.* (1852), 22 L. J. Ch. 209).

But in a case where a similar agreement was made and the money, at the suggestion of the vendor's solicitor, was paid into court pending investigation of title, but the solicitor reminded the company that the 5 per cent. would still be payable, the company not expressing objection, and the money remaining uninvested, the company were held to have acquiesced, and were ordered to pay interest up to the date of investment (*Ex parte Earl of Hardwicke* (1852), 1 De G. M. & G. 297).

Where the money was by agreement paid into a bank pending the master's approval thereafter to be paid into court, and the company did not apply to have it paid into court until long after such approval, the company were held

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liable to pay interest at 5 per cent. from date of contract until motion to pay into court (*Chambers v. White* (1850), 14 Jur. 1129).

Generally, when money is paid into court, the court has no jurisdiction to make any order as to interest on the purchase money (*Re Divers* (1855), 1 Jur. (N.S.) 995).

Thus, where the Great Western Railway Company had paid the purchase money of settled property into the Bank of England, the vendors (the trustees) could not apply under the Act by petition to charge the company with interest during the time it had lain uninvested; but *quere*, whether an action would not have lain on the ground that it should have been paid direct to the rustees (*Ex parte White, Re Great Western Rail. Co.* (1839), 9 L. J. (N.S.) Ex. in Eq. 9).

Interest can be demanded only in virtue of a contract, express or implied, or by virtue of the principal sum of money having been wrongfully withheld and not paid on the day when it ought to have been paid. Therefore, if a debtor is willing to pay, but the creditor leaves the claim for years unascertained and unexamined, interest will not run until the debt has been established and the precise amount ascertained (*Caledonian Rail. Co. v. Carmichael* (1870), L. R. 2 H. L. (Sc.) 56).

A stipulation that if the purchase money is not paid by a certain day an increased rate of interest shall be paid, is valid, and will not be regarded as a penalty, but as a separate contract (*Herbert v. Salisbury and Yeovil Rail. Co.* (1866), L. R. 2 Eq. 221; *Pryse v. Cambrian Rail. Co.* (1867), L. R. 2 Ch. 444).

But a contract to purchase land for £4,000, of which £2,000 was to be paid at once and the remaining £2,000 on a future day named in the agreement, and that if not paid by that day the vendors might repossess the land of their former estate, without any obligation to repay any part of the purchase money, was held to be in the nature of a penalty, and the company was held entitled to be relieved on payment of the balance of the purchase money with interest. Such an agreement might also be void as *ultra vires* (*In re Dagenham Dock Co.* (1873), L. R. 8 Ch. 1022).

As to interest when company enter, see s. 85, *post*.

Parties under disability enabled to sell and convey.

**7.** It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say,) all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and

on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestui que trusts, whether infants, issue unborn, lunatics, femmes covert, or other persons, and that to the same extent as such cestui que trusts respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability.

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**"All parties."**—The previous section entitled undertakers to agree with the owners for the purchase of land; this section completes the power by enabling owners to sell and convey the land to the promoters. As regards absolute owners this power was scarcely necessary to be granted, so the section is mainly devoted to conferring a power of conveyance upon persons who, but for the enactment, might be unable to convey. Many of the classes of persons mentioned in the section can, however, sell under powers given them under other Acts, as appears *infra*, in this note. When the sale is carried out by agreement these powers are often made use of in order to save the promoters the cost entailed by payment into court and subsequent investment, and they are usually willing to pay a somewhat larger sum in consequence.

Section 8 deals with the power of the like owners to dispose of copyholds, and the mode of determining the purchase money for land purchased from such persons is provided for by s. 9. Section 69 provides for the purchase money, if over £200, being paid into the bank. Sections 6, 7, extend only to lands authorised to be taken and required for the purposes of the Act. Section 12 deals with lands purchased for extraordinary purposes, and ss. 14, 15 place a limit on the powers of incapacitated persons in regard to such lands.

Section 3 of the Railway Construction Facilities Act, 1864 (27 & 28 Vict. c. 121), enables persons under disability to enter into provisional contracts with promoters of a railway before incorporation, but does not allow them to convey until after the certificate of incorporation is granted.

In certain Acts incorporating the Lands Clauses Acts, less restricted powers of conveying land are given to owners under disability. See, for example, s. 19 of the Light Railways Act, 1896, *post*, and s. 74 of the Housing of the Working Classes Act, 1890, *post*.

**"Sell and convey."**—For forms of conveyance see s. 81, but these are not commonly used as they are open to objection; see *Frend and Ware's Ry. Prec.*, p. 122. The law as to the parties who must join in conveyance is not affected by this section.

**"Corporations."**—Section 108 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), provides that "the council shall not, unless authorised by Act of Parliament, sell, mortgage, or alienate any corporate land without the approval of the Treasury" (now the Local Government Board; see 51 & 52 Vict. c. 41, s. 72). This section of the Lands Clauses Consolidation Act enables them to sell land authorised to be purchased by the Act and required for the undertaking without such consent, but they cannot sell land required by the promoters for extraordinary purposes except with consent of

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the Local Government Board. See s. 15 and note, *post*, p. 26. A ward of the city of London is not within the Municipal Corporations Act (*Finnis and Young to Forbes and Pochin* (1883), 24 Ch. D. 587).

Section 175 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), authorises district councils to sell land in certain cases.

Although public companies may have no power to sell land under their special Act, yet another public body may be authorised to take their land and the purchase money would be payable to them as persons absolutely entitled (*Re the Chelsea Waterworks Co.* (1887), 56 L. T. 421).

But such power must be expressly given to the second public company, as it will not be implied although shown on the deposited plan, and a general power given to make a railway and purchase land according to the deposited plans (*R. v. South Wales Rail. Co.* (1850), 14 Q. B. 902).

*Corporations sole.*—A rector or vicar possessing the freehold of a disused burial ground, cannot sell it unless it is desecularised by statute (*R. v. Twiss* (1869), L. R. 4 Q. B. 407). He can, however, grant the use of the surface for the purpose of being used as a highway or to widen a highway, subject to a faculty being obtained (*In re Bideford Parish Church*, [1900] P. 314). A sale by agreement of such a burial ground, although authorised by statute, apparently requires the sanction of an ecclesiastical court, at least if any monuments or dead bodies are to be removed (*Vicar of St. Botolph's, Without Aldgate v. Parishioners of Same*, [1892] P. 161). As to selling glebe lands, see Glebe Lands Act, 1888 (51 & 52 Vict. c. 20).

**"Tenant in tail."**—A tenant in tail can in the ordinary course convey with this power under the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), by a deed to be enrolled within six months in the Chancery Division of the High Court of Justice, and he may also sell under the powers of a tenant for life under the Settled Lands Acts, 1882—1890, without having the deed enrolled, or he may sell under this Act, in which case the price will be determined under s. 9 and be paid into court under s. 69, but the deed need not be enrolled.

Tenants in tail who are restrained from alienation by statute have power to sell and convey under this statute and to bar heirs in tail and remaindermen except the Crown, which can only be bound by Act of Parliament when expressly named. If the reversion is in the Crown, the consent of the Crown must be obtained (*In re Cuckfield Burial Board* (1854), 24 L. J. Ch. 585).

**"Tenant for life."**—He has also the powers of sale granted by the Settled Land Acts, 1882—1890. He cannot, however, be compelled to sell under the provisions in these Acts and so save the promoters the costs of reinvestment. Section 56 of the Settled Land Act, 1882, preserves the powers of a tenant for life under statutes like the Lands Clauses Acts (*Re Lady Bentinck and London and North Western Rail. Co.* (1895), 12 T. L. R. 100).

When the legal estate is vested in trustees the equitable tenant for life, although he can enter into an agreement for sale, cannot convey, and the trustees are necessary parties to the conveyance (*Lippincott v. Smyth* (1860), 29 L. J. Ch. 521).

As to the effect of a resettlement by the tenant for life and his heir upon an agreement to sell as tenant for life, see *In re Barry Rail. Co. and Lord Wimborne* (1897), 76 L. T. 489.

A tenant for life under a will with a proviso against alienation, and a limitation over, in case of infraction, has apparently power of sale under this section, and the court would order the purchase money to be laid out in other lands to be settled to like uses (*Devenish v. Brown* (1856), 2 Jur. (N.S.) 1043). Now under the Settled Land Acts such a restraint would be inoperative. Where a tenant for life agreed that he should have £5 per cent. of the purchase money paid to him for his own benefit from date of agreement until the conveyance should be executed, it was held that it was not an improper advantage for him to take of his situation as tenant for life, the amount not being excessive (*In re Hungerford, and In re Rugby and Stamford Rail. Co.* (1855), 1 Jur. (N.S.) 845; *Ex parte Hardwicke* (1852), 1 De G. M. & G. 297).

He is not, however, entitled to have the price of the unworked mines and minerals even although he is without impeachment for waste, and the bulk of the minerals could have been in all probability worked out during his life (*In re Robinson's Settlement Trusts*, [1891] 3 Ch. 129). See notes to s. 69.

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**"Married women."**—The Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), has removed her disability in regard to her separate property if she married after January 1st, 1883, and if married before as regards separate property received after that date in respect of which she can contract as a *feme sole*. But it does not affect settlements or property she is restrained from anticipating. As regards real estate, not separate property, she may dispose of it under the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), as amended by the Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 7, either alone or with her husband. The deed must be acknowledged before a Commissioner.

As regards property which she is restrained from anticipating, she would doubtless have power of sale under this Act should there be no trustees, but she can exercise in respect of such property the powers of the Settled Land Acts, 1882—1890, under 45 & 46 Vict. c. 38, s. 61, if she is in effect a tenant for life within the meaning of these Acts, as to which see *Bates v. Kesterton*, [1896] 1 Ch. 159. If necessary the court would order the removal of the restraint under s. 39 of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41).

Under this Act, if merely entitled to dower, she has no power in respect of the fee; she can release her dower by deed acknowledged in the ordinary way, but under this Act no such acknowledgment is required.

In case of a woman married since 1834, a husband by conveying bars her right of dower, under the Dower Act, 1833 (3 & 4 Will. 4, c. 105), s. 4, and she is not, therefore, a necessary party to the conveyance.

If however, her husband is dead, and her right to dower is accrued, it seems that she would be a necessary party. In such a case she is entitled when the land is taken to have the value of her right of dower paid to her out of the fund in court (*In re Hall's Estate* (1870), L. R. 9 Eq. 179).

Where land is demised to a husband and wife and they convey to a railway company under s. 7 by a deed not acknowledged, it was held that this interest of the married woman was included under the clause "seised in her own right," and the conveyance was good (*Cooper v. Gostling* (1863), 4 Giff. 449).

A married woman who is absolutely entitled to an interest in property for her separate use is the proper party to sell, and not the trustee (*Peters v. Lewis and East Grinstead Rail. Co.* (1881), 18 Ch. D. 429, 437). See note below "Trustees."

**"Guardians."**—Under the Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 59, 60, an infant who is in his own right seised of or entitled in possession to land is to be deemed a tenant for life, and the powers of that Act as regards all infant tenants for life may be exercised by the trustees of the settlement if there are any, and if there are none then by such person and in such manner as the court, on the application of a testamentary or other guardian or next friend of the infant, orders. Failing a testamentary guardian or one already appointed by the court, it would appear advisable to proceed under the Settled Land Act, or under the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 16, instead of under this Act. Guardians by nature, or nurture or *ad litem*, would appear not to be included in the powers given by this section of the Lands Clauses Act. See *Frend and Ware's Ry. Precedents*, p. 237.

**"Lunatics and idiots."**—This Act only enables the committees of lunatics and idiots to sell, and does not authorise a person of unsound mind who has not been so found to do so (*In re Tugwell* (1884), 27 Ch. D. 309).

Land belonging to persons of unsound mind can, however, be purchased under the Lunacy Act, 1890 (53 Vict. c. 5), as by ss. 116 and 120 the judge has power to appoint some person to sell the land. Under the same Act the committees have power to sell the land with the consent of a judge in lunacy independently of this section of the Land Clauses Consolidation Act. And

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even under this section it would appear necessary that the agreement should be inquired into by the court to see that it is proper and beneficial, and the sanction of the judge obtained (*In re Gawan Taylor*, and *In re York and North Midland Rail. Co.* (1849), 1 Macn. & G. 210, 211; and see *In re Wade* (1849), H. & Tw. 202; *Re Brown* (1849), 1 Macn. & G. 201).

When lands subject to a rentcharge in favour of a lunatic are taken by promoters, the court will authorise the committee to release the lands from the rentcharge, the corporation purchasing in the name of the lunatic a Government annuity of the same yearly amount (*In re Brewer* (1875), 1 Ch. D. 409).

**"Parties entitled to a receipt of rents and profits."**—A receiver appointed by the court would require the consent of the court. See *Tink v. Rundle* (1847), 10 Beav. 318.

**Mortgagor in possession.**—When a company desiring to take land deal only with the mortgagor, although they are aware of an equitable mortgage on the land, the equitable mortgagees are not bound by the proceedings even though they are aware of them, and the mortgagees are entitled in default of payment to have the land assigned to them by the company and the landowner (*Martin v. London, Chatham and Dover Rail. Co.* (1866), L. R. 1 Eq. 145, and 1 Ch. 501).

As to dealings with lands in mortgage, see ss. 108—114.

**Owners of rights of common.**—By the Commons Act, 1899 (62 & 63 Vict. c. 30), s. 22, a grant or inclosure of a common purporting to be made under the general authority of this Act shall not be valid unless specially authorised by Act of Parliament, or made to or by a Government department or with the consent of the Board of Agriculture.

**"Executors."**—Where the owner of lands had agreed to sell to a railway company and died before completion, having demised his real estate to an infant, the executors were held entitled to the purchase money, and the infant was ordered to be a trustee under the Trustee Appointment Act, 1850 (13 & 14 Vict. c. 28), and on the payment by the company of the purchase money to the executors, he or some proper person was ordered to execute a conveyance to the company (*In re Lowry's Will* (1872), L. R. 15 Eq. 78).

As to the power of executors to grant an easement who have merely a power of sale, see *In re Barrow-in-Furness Corporation and Rawlinson's Contract*, [1903] 1 Ch. 339.

**"Trustees."**—Where a settlement gave trustees a power of sale during the life of a tenant for life with his consent in writing, and the promoters in the proceedings dealt with the tenant for life and not with the trustees, it was held that the conveyance must be made under this section by the tenant for life and not by the trustees under their power of sale (*In re Pigott and Great Western Rail. Co.* (1881), 18 Ch. D. 146).

And where trustees have a power of sale under the settlement, but profess to convey under this Act, the validity of the sale must be determined without reference to the power (*Peters v. Lewes and East Grinstead Rail. Co.* (1881), 18 Ch. D. 429).

In the same case it was held that a bare trustee could not sell so as to bind his *cestui que trust* under this Act, and the same principle applied where a married woman was absolutely entitled (*ibid.*, 437).

But it would appear that when a married woman has the life estate for her separate use, with a general power of appointment, that the trustees ought to join in the conveyance (*Hall v. London, Chatham and Dover Rail. Co.* (1866), 14 L. T. (N.S.) 351; and see *Lippincott v. Smyth* (1860), 29 L. J. Ch. 520).

Trustees of a charity—an ancient hospital—are capable of making a valid alienation of the charity land under this section (*St. Thomas's Hospital Governors v. Charing Cross Rail. Co.* (1861), 30 L. J. Ch. 395; and see *Grosvenor v. Hampstead Junction Rail. Co.* (1857), 26 L. J. Ch. 731). In order to escape the expense and trouble of having the money paid into court, attempts have been made to sell under the power of sale contained in the deed of foundation. Trustees, however, may not be able to sell the charity

estate by reason of the prohibition in s. 29 of the Charitable Trusts Amendment Act, 1855 (18 & 19 Vict. c. 124), unless they obtain the consent of the Charity Commissioners or other persons therein mentioned, or unless the sale is under "a scheme legally established." It has been held that a deed of foundation is not such a scheme (*In re Mason's Orphanage and London and North Western Rail. Co.*, [1896] 1 Ch. 596). For a case where charity land may be sold without consent of the Charity Commissioners, see *In re Clergy Orphan Corporation*, [1894] 3 Ch. 145.

The official trustees of charitable funds are not bound to join in a conveyance and to receive the purchase money so as to save the expenses of payment into court (*In re Leeds Grammar School*, [1901] 1 Ch. 228).

**Lessee.**—Lessees can only sell on behalf of themselves and cannot bind persons entitled in reversion or remainder.

Where promoters pay the purchase money of leaseholds, and with the consent of the lessee take possession, they are bound to take an assignment, and bound to enter into an engagement to indemnify the vendor against the covenants in the lease (*Harding v. Metropolitan Rail. Co.* (1872), L. R. 7 Ch. 154).

But the lessee is not liable for subsequent breaches of covenant, when this property is taken from him under compulsory powers by a railway company, as the covenant is discharged by the subsequent Act of Parliament (*Bailey v. De Crespigny* (1869), L. R. 4 Q. B. 180, and next case).

The lessee, however, will be liable for damages in respect of breaches committed after the notice to treat, and before the assignment to the company, the measure of damages being the amount by which the lessor's reversion had become deteriorated at the date when the company took possession under the assignment (*Mills v. Guardians of East London Union* (1872), L. R. 8 C. P. 79).

On the same principle where a lessee is bound by his lease not to alienate without license of the lessor, the right of the lessor is taken away by operation of the Act, and the lessee is not bound to obtain it or to procure an apportionment of the rent between himself and the company (*Slipper v. Tottenham and Hampstead Junction Rail. Co.* (1867), L. R. 4 Eq. 112; and see *Wadham v. Marlowe* (1785), 8 East, 314 n).

In an Irish case, it was held that where a company require the land only for a limited period, they cannot purchase such land from a lessee who is restrained from alienating, without dealing with the owner of the reversion also (*Legg v. Belfast and Ballymena Rail. Co.* (1850), 1 Ir. C. L. 124, note to *R. v. Irish S. E. Rail. Co.* (1850), *ibid.* 119).

As to leases, see further ss. 119—123.

8. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party herein-before enabled to sell and convey or release lands to the promoters of the undertaking.

See ss. 95—107, as to dealings with copyhold lands.

Married women's copyholds are by general custom conveyed by surrender made by the husband and wife, she being examined by the steward as to her consent.

9. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such

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**NOTE.**

Parties under disability to exercise other powers.

Amount of compensation in case of parties under

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disability  
to be  
ascertained  
by valuation,  
and paid into  
the bank.

lands except under the provisions of this (a) or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, (b) or by arbitration, (c) or by the valuation of a surveyor (d) appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall, upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors, if they agree, or if not, then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereinafter mentioned.

(a) Sections 6, 7.

(b) Sections 38—57.

(c) Sections 23, 25—37.

(d) Sections 58—62.

**"Injury to any such lands."**—This section is not confined to lands purchased by agreement, but extends to lands taken, and also to the permanent damage to lands held by persons under disability. The word "such" in the above clause does not refer to lands purchased or taken, but to lands belonging to persons under disability. Therefore, a tenant for life can agree under this section for a sum of money as compensation for lands injuriously affected, so as to bind those in remainder (*Stone v. Corporation of Yeovil* (1876), 2 C. P. D. 99). That case was also under the Waterworks Clauses Act, and the injury caused was by a partial diversion of a stream where the corporation had power to take the whole stream, and it was held that the tenant for life of a mill might make a valid agreement under this section, for the payment of compensation for the full damage that would be occasioned when the whole stream was taken. See s. 6 of Waterworks Clauses Act, *post*.

**"By the valuation of two . . . surveyors."**—A contract to sell at a price to be fixed by two surveyors is not *per se* enforceable, but if the parties adopt that which is the ordinary practice, if the surveyors fix the price and then, the price being fixed, they approve of it as a proper valuation, and the parties sell for not less than that price, the section is complied with (*Peters v. East Grinstead Rail. Co.* (1881), 18 Ch. D. 429, 437).

If trustees are selling, they cannot nominate one of themselves who happens to be a surveyor to value on their behalf, and it would appear that in no case can a vendor nominate himself, and certainly not if he would thereby bind other persons (as, *e.g.*, a tenant for life) (*ibid.*, pp. 438, 440).

**"A declaration in writing."**—The provisions of this section must be strictly followed, and it is not enough if the section have been complied with in substance. A declaration in writing cannot be dispensed with, being a document of title showing that the price has been properly ascertained and that all formalities have been duly complied with, and in its absence a claim by the company for specific performance of the agreement will not be enforced (*Bridgend Gas and Water Co. v. Dunraven* (1885), 31 Ch. D. 219).

The same point was decided in *Wycombe Rail. Co. v. Dormington Hospital* (1866), L. R. 1 Ch. 268, TURNER, L.J., considering that the surveyors should also be regularly nominated.

The case of *Baker v. Metropolitan Rail. Co.* (1862), 31 Beav. 504, as regards this point may be considered over-ruled (see note, p. 511), on appeal before Lord WESTBURY. If the company refuse to appoint a valuer the proper remedy is by *mandamus* to compel them to do so, and not by reference to chambers to inquire as to whether the Act has been substantially complied with, as was done in that case.

In a case, however, where a rector petitioned the court to have invested a small sum of money paid into the bank by a railway company for a portion of the glebe, and the amount had been fixed by one surveyor nominated by and acting for both parties, WIGRAM, V.-C., made the order prayed for, subject to the production of an affidavit from a surveyor to be appointed by the petitioner to satisfy the court of its sufficiency, remarking that he thought the only object of the provision was to protect the future interests of parties under disability (*Ex parte Rector of Adderley* (1863), 10 L. T. 131).

"Two justices."—See note to s. 3.

"Compensation shall be deposited in the bank."—Sections 69—80 deal with the purchase money, and compensation coming to parties having limited interests. The bank in this country is the Bank of England, see s. 3.

10. It shall be lawful for any person seised in fee of or Where  
entitled to dispose of absolutely for his own benefit any lands vendor  
authorised to be purchased for the purposes of the special Act absolutely  
to sell and convey such lands or any part thereof unto the entitled,  
promoters of the undertaking in consideration of an annual rent- lands may  
charge payable by the promoters of the undertaking, [but, except as be sold on  
aforesaid, the consideration to be paid for the purchase of any such chief-rents.  
lands, or for any damage done thereto, shall be in a gross sum].

"Any person."—The exception which prevented persons under disability selling for an annual rentcharge is repealed by the Lands Clauses Act, 1860 (23 & 24 Vict. c. 106), ss. 1—3, *post*, and they can now do so and recover in the same manner as provided in s. 11 of this Act, the amount to be settled as provided in s. 9.

An agreement had been made between a railway company and a contractor to the effect that if any landowner was unwilling to sell to the company in consideration of a rentcharge, the contractor should purchase for money and re-sell to the company who should grant a rentcharge to the contractor. The contractor agreed with certain landowners for the purchase of the land, paid the purchase money, and received grants of rentcharges calculated on the amount, and the landlords conveyed direct to the company. These rentcharges granted to the contractor were held good, he being in fact the owner, but rentcharges granted to the contractor generally in respect of sums paid for the purposes of the company were held to be invalid as it did not appear whether such money was purchase money or other compensation (*In re Manchester and Milford Rail. Co.* (1880), 15 L. J. No. of Cas. 47).

Owners in fee-simple can, of course, deal with their land in other ways than here mentioned; accordingly we find that owners have leased the land or granted wayleaves over the land at a yearly rent. For examples of this see *North Eastern Rail. Co. v. Lord Hastings*, [1900] A. C. 260, where the construction of the lease was in dispute, and *Eldon v. North Eastern Rail. Co.* (1899), 80 L. T. 723, where the company had served a notice to treat to acquire the reversion. Section 11 would not appear to be applicable to the rents reserved by such leases.

Sect. 9.

NOTE.

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Payment of  
rents to be  
charged  
on tolls.

**11.** The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

**"Shall be charged on the tolls."**—The holder of a rentcharge created by a railway company under this and the preceding section has priority over the debenture holders. He has a charge on the land sold for his purchase money, and these sections, said ROMILLY, M.R., do not take away that charge. But he has no charge on land not sold by him. He has a first charge on the net earnings of the undertaking after paying in the first place what is necessary to maintain and work the line. Such holders are entitled to be paid such rentcharges *pari passu* (*Eyton v. Denbigh, Ruthin, etc. Rail. Co.* (1869), L. R. 7 Eq. 439).

In *Earl of Jersey v. Briton Ferry Floating Dock Co.* (1869), L. R. 7 Eq. 409, JAMES, V.-C., held that there was no lien for the unpaid rentcharge on the land sold, as it was contrary to the intention of the parties that he should have a right to enter and destroy the public work if the rent fell into arrear. In this case, however, the conveyance had not been completed, and the lien claimed was for the arrears from the time the company took possession. The two cases do not appear to be reconcilable. See *post*, s. 84, "Vendor's lien."

Where land is sold to promoters for a rent as distinguished from a gross sum, the rent *ipso facto* becomes a charge on the tolls. If the word "rent" is used in the conveyance and not "rentcharge," a power of distress is nevertheless incident to it under 4 Geo. 2, c. 28, s. 5, which makes it a rentcharge, and, therefore, s. 10 and this section apply. The law is the same if the property sold is an easement (*In re Lord Gerard and Beecham's Contract*, [1894] 3 Ch. 295).

**"And shall be otherwise secured."**—If lands are sold to a railway company in consideration of a rentcharge and the company agree that the vendor shall have power of re-entry if the rent is not paid, this is a valid agreement and not *ultra vires*, as the Act provides that the charge may be secured in such manner as shall be agreed upon, and the court will allow the vendor to enter upon the lands and exclude the company until he is satisfied, even though a receiver may have been appointed (*Forster v. Manchester and Milford Rail. Co.* (1880), 49 L. J. Ch. 454).

**"To levy the same by distress."**—The mere fact that a receiver has been appointed of the tolls, profits, and income of an undertaking in a suit instituted by the owner of a rentcharge on behalf of himself and all other holders of similar rentcharges, will not prevent a person who holds such a rentcharge from getting the leave of the court to distrain (*Eyton v. Denbigh, Ruthin, etc. Rail. Co., Ex parte Price* (1868), L. R. 6 Eq. 14).

In the same suit liberty was granted to another holder to distrain, but where the company had by deed conveyed their superfluous lands and chattels to trustees upon trust for the benefit of creditors of the company, and a suit was instituted by a creditor on behalf of himself and all other creditors

entitled to the benefit of the trust deed for an administration of the trusts thereof, and a receiver appointed in that suit also, the court refused leave to the holder of a rentcharge to distrain the goods which had been conveyed to trustees (*Eyton v. Denbigh, etc. Rail. Co.*; *Rickman v. Johns* (1868), L. R. 6 Eq. 488).

In this case also the court refused to allow the party distraining to take the locomotives that happened to pass over his land for the purpose of working the line (*ibid.*, p. 491).

Rails and sleepers forming railways, if fixed into the ground, become fixtures and cannot be distrained (*Turner v. Cameron* (1870), L. R. 5 Q. B. 306).

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NOTE.

12. In case the promoters of the undertaking shall be empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorised to be purchased for extraordinary purposes.

Power to purchase lands required for additional accommodation.

**"Extraordinary purposes."**—Certain local Acts, while providing that the land required for the undertaking may be compulsorily taken, allow the undertakers also to purchase land by agreement for other purposes connected with the undertaking. In the case of railways, such extraordinary purposes are defined by s. 45 of the Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), as follows :

"For the purpose of making and providing additional stations, yards, wharfs, and places for the accommodation of passengers, and for receiving depositing and loading or unloading goods or cattle to be conveyed upon the railway, and for the erection of weighing machines, toll-houses, offices, warehouses, and other buildings and conveniences :

"For the purpose of making convenient roads or ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway." See *post*.

Referring to this and the next section of the Lands Clauses Act, Lord BRANWELL said : "That they seemed to be intended to enable the promoters to acquire land which at the time of the passing of the special Act was not supposed to be required for the undertaking" (*Hooper v. Bourne* (1877), 3 Q. B. D., pp. 258, 272).

Since the case of *London, Brighton and South Coast Rail. Co. v. Truman* (1885), 11 App. Cas. 45, it is usual to insert in local Acts a proviso that land acquired for extraordinary purposes shall be used so as not to create a nuisance.

13. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons, as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time ; but the total quantity of land to be held at any one time by the promoters of the undertaking for the purposes aforesaid shall not exceed the prescribed quantity.

Authority to sell and re-purchase such lands.

As to superfluous lands, see ss. 127—132. But the lands acquired by voluntary agreement for extraordinary purposes are not superfluous lands and do not, if not used or disposed of, vest in the adjoining owners. The company

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is left free to deal with lands which they can only acquire by private treaty as any ordinary proprietor may do (*City of Glasgow Union Rail. Co. v. Caledonian Rail. Co.* (1871), L. R. 2 Sc. Ap. 160).

Restraint on purchase from incapacitated persons.

**14.** The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special Act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the lands so sold or disposed of by them.

See s. 7 as to persons under disability.

Municipal corporations not to sell without the approbation of the Treasury.

**15.** Nothing in this or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the [*Commissioners of Her Majesty's*] (a) Treasury [*of the United Kingdom of Great Britain and Ireland, or any three of them,*] (a) any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily.

(a) Repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

See ss. 7, 13, and 14, *supra*. The consent of the Treasury was formerly required under s. 108 of the Municipal Corporations Act, 1882, but in that Act the Local Government Board was substituted for the Treasury by 51 & 52 Vict. c. 41, s. 72, and this section will no doubt be construed as if the Local Government Board was also substituted for the Treasury.

The consent of the Lords Commissioners of the Treasury to the alienation of the property of a corporation was sufficiently signified by a letter signed by their secretary. Such consent authorises the alienation of the corporate property as specified in the memorial on which it is founded (*Arnold v. Mayor of Gravesend* (1856), 25 L. J. Ch. 776).

Purchase of lands otherwise than by agreement.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows: (a)

(a) As to the effect of the headings see notes to s. 5. This portion of the Act includes ss. 16—68.

Capital to be subscribed before compulsory powers of purchase put in force.

**16.** Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors, and

administrators, for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the powers of this or the special Act, or any Act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking. Sect. 16.

**"Shall be subscribed."**—As to the evidence required to show that the amount has been subscribed, see s. 17.

**"The compulsory taking of land."**—This section is directed against compulsory taking of land only, and not against purchases by agreement. It is intended as a condition precedent to the exercise of compulsory powers, and is designed solely for the protection of those against whom the compulsory powers of the Act are to be exercised. A company has power therefore to purchase land by agreement before the whole capital has been subscribed, and such agreement will be enforced against the company (*Guest v. Poole and Bournemouth Rail. Co.* (1870), L. R. 5 C. P. 553).

The notice to treat under s. 18 is not necessarily an exercise of compulsory powers. It may be followed by an agreement by the landowner to sell the land at an agreed price, or at such price as a jury or arbitrator may assess as its value, or it may be a step towards exercising compulsory powers. In itself it is a neutral proceeding. If, therefore, a company give notice to treat before the capital has been subscribed, the landowner may assent to it, and compel the company by a *mandamus* to issue a warrant for the assessment of the compensation (*Guest v. Poole, etc. Rail. Co.*, *supra*, and see *In re Uxbridge and Rickmansworth Rail. Co.* (1890), 43 Ch. D. 536, to same effect as to the nature of a notice to treat.

As to the time within which compulsory powers may be exercised, see s. 123.

If the capital is not subscribed, all exercise of compulsory powers by companies is *ultra vires*, and on this ground the court refused to order a railway company to complete its undertaking (*R. v. Ambergate, etc. Rail. Co.* (1853), 1 E. & B. 372). Such an order would, however, not now be made even if the capital were subscribed, as it has been decided that the statutes empowering companies to carry out undertakings enable them, but do not compel them, to do so (*York and North Midland Rail. Co. v. R.* (1853), 1 E. & B. 858; *Philip v. Edinburgh, Perth, and Dundee Rail. Co.* (1857), 2 Macq. H. L. (Sc.) 514; *Scottish North Eastern Rail. Co. v. Stewart* (1859), 3 Macq. H. L. (Sc.) 382).

**Cases where section is inapplicable.**—Where by a special Act a railway company were empowered to make an archway under and a bridge over the railway of another, and also to purchase the rights of using these in perpetuity, and they proceeded first by giving notice to treat and then, under s. 85, by giving notice of their desire to enter upon and use the lands, and the railway company owning the land sought to restrain them on the ground that the capital had not been subscribed under this section, it was held, after much conflict of opinion, that they could not be restrained on that ground. Certain of the judges held that the special Act excluded the operation of this section, while Lord BRAMWELL was of opinion that the company could proceed under s. 85, although s. 16 had not been complied with. Lord WATSON, however, took an opposite view (*Great Western Rail. Co. v. Swindon, etc. Rail. Co.* (1884), 9 App. Cas. 767).

Where an existing railway company is authorised to make a new branch line, and to raise funds for the purpose, this section does not apply, and the compulsory powers can be exercised before the new capital has been subscribed (*Weld v. South Western Rail. Co.* (1863), 33 L. J. Ch. 142; *R. v. Great Western Rail. Co.* (1852), 1 E. & B. 253).

In cases where this Act is not incorporated or does not apply, the promoters are not bound to show either that they have a sufficient fund in hand to satisfy the price of the land they propose to take, or the means by which they propose to obtain such fund, and a landlord who sought upon these

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grounds to restrain Improvement Commissioners from proceeding under their Acts to take his land was unsuccessful (*Salmon v. Randall* (1838), 3 My. & C. 439).

Eminent authorities have, however, expressed considerable doubt as to whether promoters can take compulsorily any part of the land authorised to be taken when it is clear that the undertaking cannot be completed (*Gray v. Liverpool and Bury Rail. Co.* (1846), 9 Beav. 391; *Blakemore v. Glamorgan-shire Canal Navigation* (1832), 1 My. & K. 154, at p. 164; *Cohen v. Wilkinson* (1849), 1 Macn. & G. 481; *Agar v. Regent's Canal Co.* (1814), 1 Swans. 250 n.; *Mayor of King's Lynn v. Pemberton* (1818), 1 Swans. 244; *Salmon v. Randall* (1838), 3 My. & C. 439).

A certificate of two justices to be evidence that the capital has been subscribed.

**17.** A certificate under the hands of two justices, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof; and on the application of the promoters of the undertaking, and the production of such evidence as such justices think proper and sufficient, such justices shall grant such certificate accordingly.

*"Two justices."*—See definition and notes, s. 3.

A certificate was granted at the Mansion House, London, in a case where the whole of the debenture stock and capital stock were issued to a contractor, who, in consideration thereof, agreed to acquire the land, make the way and take over the liabilities of the company. See 66 J. P. 490 (1902).

*"Shall be sufficient evidence."*—This does not mean merely *prima facie* sufficient; in the absence of fraud the certificate is intended to be conclusive as regards the landowner, and proceedings to exercise compulsory powers will be valid, even although the certificate may have been granted by the magistrates on a mistaken interpretation of certain documents (*Ystalyfera Iron Co. v. Neath and Brecon Rail. Co.* (1873), L. R. 17 Eq. 142).

Notice of intention to take lands.

**18.** When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorised to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

*"Lands."*—See definition and notes to s. 3.

*Creating Easements.*—In this section, unless there is provision in the special Act, the word "lands" has been held not to include incorporeal hereditaments, such as easements, in the sense that the undertakers cannot create, or

cause landowners to grant to them, easements over their lands. Although a right of way may be sufficient for the purposes of the company, they must acquire the land *in solido* (*Pinchin v. London and Blackwall Rail. Co.* (1854), 5 De G. M. & G. 851, 862, *per* Lord CRANWORTH. This case was discussed in *Great Western Rail. Co. v. Swindon Rail. Co.* (1884), 9 App. Cas. 787, and not overruled as regards this section).

It would be otherwise if the special Act authorised the company to acquire an easement only (*Hill v. Midland Rail. Co.* (1882), 21 Ch. D. 143).

Similarly, if not specially authorised, promoters cannot serve a notice to treat for a stratum of land, for the purpose, for example, of making a tunnel. They must acquire the whole land (*Sparrow v. Oxford, Worcester, and Wolverhampton Rail. Co.* (1852), 2 De G. M. & G. 94, 108; *Ramsden v. Manchester, etc. Rail. Co.* (1848), 1 Ex. 723; *Falkner v. Somerset and Dorset Rail. Co.* (1873), 16 Eq. 458; *Re Metropolitan District Rail. Co. and Cosh* (1880), 13 Ch. D. 607, at 616).

In the case of railways made at deep levels, the promoters are usually allowed, by their special Act, to appropriate and use the subsoil without being required to take the surface. In such cases they are, nevertheless, bound to serve a notice to treat for the stratum, unless there is a special provision in their Act to the contrary (*Farmer v. Waterloo and City Rail. Co.*, [1895] 1 Ch. 527).

Local authorities, on laying sewers or water mains under the powers contained in ss. 16 and 54 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), do not require to serve a notice to treat before doing so, but compensation is payable in respect of any injury done (*Thornton v. Nutter* (1867), 31 J. P. 419; *Roderick v. Aston Local Board* (1877), 5 Ch. D. 328; and *Swanston v. Twickenham Local Board* (1879), 11 Ch. D. 838). Such is also the law in regard to sewers laid under the Metropolis Management Acts (*North London Rail. Co. v. Metropolitan Board of Works* (1859), 28 L. J. Ch. 909; *Hughes v. Metropolitan Board of Works* (1861), 4 L. T. (N.S.) 318).

Gas and water mains may also, it would seem, be laid under streets without notice to treat to the owner of the subsoil, if it is done by virtue of an Act incorporating the Gas or Waterworks Clauses Acts of 1847, but they cannot be laid in any land not dedicated to public use without consent of the owner. See ss. 6, 7, and 28, 29 respectively of these Acts.

**Destruction of Easements.**—Where the promoters by taking land or by the execution of their works interfere with or destroy an easement, the owner's remedy does not consist in calling upon the promoters to purchase the easement or to proceed under this section, but his claim for compensation arises under s. 68 for injuriously affecting his land (*Duke of Bedford v. Dawson* (1875), 20 Eq. 353; and see notes to s. 68).

It does not matter whether the special Act gives power to acquire easements or not. The promoters should not, therefore, give notice to treat for easements which they may obstruct or destroy, but leave the owners to obtain compensation under s. 68, or in the manner provided by the special Act (*Clark v. School Board for London* (1874), L. R. 9 Ch. 120; *School Board for London v. Smith* (1895), W. N. 37; *Kirby v. School Board for Harrogate*, [1896] 1 Ch. 437, where ancient lights and a right of way and rights under a covenant respectively were interfered with by schools built under the Elementary Education Act, 1870 (33 & 34 Vict. c. 75); *Wigram v. Fryer* (1887), 36 Ch. D. 87, a similar case under a metropolitan improvement Act). *Swanston v. Finn* (1883), 52 L. J. Ch. 235; *Badham v. Marris* (1882), 52 L. J. Ch. 237, are respectively cases of support and of ancient lights under the Artisans' Dwellings Acts. See also *Thicknesse v. The Lancaster Canal Co.* (1838), M. & W. 472; and notes to s. 68.

Similarly where a stream is entered upon and part only of the water taken, an owner of the stream below where it has been entered upon cannot compel the company to proceed under this section, but the remedy for the water diverted is under s. 68 (*Bush v. Trowbridge Waterworks Co.* (1875), L. R. 19 Eq. 291; 10 Ch. 459; and see ss. 6, 12 of the Waterworks Clauses Act, 1847, *post*, and cases there cited. When the whole stream is

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diverted the promoters must give a notice to treat under this section (*Ferrand v. Corporation of Bradford* (1856), 21 Beav. 412).

As to the different interests in land, see, *infra*, note "To all the parties interested."

Under this section two conditions are required in order to enable promoters of an undertaking to take land. These conditions are :

1. The land must be required for the purpose of the undertaking.

2. The land so required must be authorised to be taken by the special Act.

**I. The land must be required for the purpose of the undertaking.**—

The promoters of an undertaking, when they are authorised to take land for the purposes of that undertaking, are by the legislature constituted the sole judges as to whether they will or will not take those lands, provided only that they take them *bond fide* with the object of using them for the purpose authorised by the legislature, and not for any sinister or collateral purpose. The legislature leaves it to them to say to what extent they will use their statutable powers (*Stockton and Durlington Rail. Co. v. Brown* (1860), 9 H. L. Cas. 246; *Webb v. Manchester and Leeds Rail. Co.* (1839), 4 My. & C. 116).

When, therefore, it is clear that the land is required for some purpose within the compulsory powers of a railway company, the court will not interfere to restrain them merely on the ground that they might obtain the same object in some other way without taking the land (*Lamb v. North London Rail. Co.* (1869), L. R. 4 Ch. 522).

Where promoters are authorised to take or to purchase lands for a particular purpose, and they acquire land for that purpose, and the proper carrying on of their authorised work on such lands causes a nuisance, they cannot be restrained from carrying on their work on such land on the ground that they have power to purchase other land, and that the carrying on of the work on such other land would not cause a nuisance. It is not the duty of a company when they have an option to select land for the authorised purposes of their undertaking so to select it that its use for those purposes may not be detrimental, or as little detrimental as possible, to any adjoining owner. It does not matter whether it is land they are authorised to take compulsorily or additional land they are authorised to purchase (*London, Brighton and South Coast Rail. Co. v. Truman* (1885), 11 App. Cas. 45; *R. v. Pease* (1832), 4 B. & Ad. 30).

In some Acts, however, promoters are expressly required not to commit a nuisance, and they must choose their land and execute their works so as not to do so; otherwise they may be restrained by injunction (*Jordeson v. Sutton South-coats and Driypool Gas Co.*, [1899] 2 Ch. 217).

In some cases special Acts have authorised public bodies to erect hospitals and district asylums, and to purchase lands for the purpose, but have specified no land nor imperatively directed that such buildings shall be erected. In such cases the public bodies can only exercise these powers, provided they can do so without creating a nuisance, and if they create such a nuisance they will be restrained (*Metropolitan Asylum District v. Hill* (1881), 6 App. Cas. 193). In that case the nuisance was found as a fact. A hospital for infectious diseases is not in itself a nuisance within the meaning of the Public Health Act, 1875, and a local authority proposing to erect one will not be restrained on the ground that they are setting up a noxious business (*Withington Local Board v. Corporation of Manchester*, [1893] 2 Ch. 19).

If a company *bond fide* acting under their statutory powers obtain a resulting benefit which it was not contemplated that they should get, they will nevertheless be entitled to the benefit and will not be restrained (*Stevens v. Metropolitan District Rail. Co.* (1885), 29 Ch. D. 60).

*Collateral purpose.*— If, however, the lands are not actually required for the purposes of the undertaking, or if they are required for collateral purposes, the promoters of undertakings will generally be restrained from exercising their compulsory powers. "The principle is this, that when persons embarking in great undertakings for the accomplishment of which those engaged in them

have received authority from the legislature to take compulsorily the land of others, making to the latter proper compensation, the persons so authorised cannot be allowed to exercise the powers conferred on them for any collateral object": per Lord CRANWORTH, in *Galloway v. Mayor of London* (1866), L. R. 1 H. L. 34, 43, and see *Donaldson v. South Shields Corporation* (1899), 79 L. T. 685, and note, "Where undertaking is for the public good," *post*, p. 32.

Thus, when companies have endeavoured by means of their compulsory powers to take land permanently for the purpose of obtaining materials for executing other parts of their works, as, for example, to construct an embankment, they have been restrained (*Bentinck v. Norfolk Estuary Co.* (1857), 26 L. J. Ch. 404; *Eversfield v. Mid-Sussex Rail. Co.* (1858), 3 De G. & J. 286). As to railways taking lands temporarily for this and similar purposes, see *Railway Clauses Consolidation Act*, 1845, ss. 30—44, *post*.

Nor will they be allowed to take land permanently for the purpose of depositing soil during the construction of the railway, but it would seem to be otherwise if they are likely afterwards to require the land for the construction of the railway (*Lund v. Midland Rail. Co.* (1865), 34 L. J. Ch. 276, and note thereto).

Nor may they take land to construct a road different from that authorised by their Act when such road is for the accommodation of an adjoining landowner and not necessary for the purpose of constructing the railway (*Dodd v. Salisbury and Yeovil Rail. Co.* (1859), 1 Giff. 158).

So, also, a waterworks company authorised to take a field or part thereof for the purposes of making a tunnel were restrained from taking part of the field for the purpose of sinking a well and erecting pumping machinery thereon (*Simpson v. South Staffordshire Waterworks Co.* (1865), 34 L. J. Ch. 380).

And a company will be restrained from exercising its compulsory powers in taking land if such land is taken in order to hand it over to fulfil a contract previously made with another landowner (*Vane v. Cockermouth, etc. Rail. Co.* (1865), 13 W. R. 1015; *Lord Carrington v. Wycombe Rail. Co.* (1868), L. R. 3 Ch. 37). In the case of a public body such an exercise of its powers may be valid on the ground that such was the intention of the legislature (*Rolls v. London School Board* (1884), 27 Ch. D. 639, and cases cited *infra*, in note, "Meaning of the purposes of the undertaking").

A company which has taken land may, however, use it for some other purpose, as by granting a right of way over it, provided such use is not incompatible with the objects prescribed by the statute (*In re Gonty and the Manchester, Sheffield and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439; *Grand Junction Canal Co. v. Petty* (1888), 21 Q. B. D. 273; *Rex v. Leake* (1833), 5 B. & Ad. 469; *Foster v. London, Chatham and Dover Rail. Co.*, [1895] 1 Q. B. 711; *Great Western Rail. Co. v. Solihull Rural Council* (1902), 86 L. T. 852).

Where a railway company takes land in excess of its powers it would appear that the court will not grant an injunction if the quantity and value of the land taken in excess are extremely small (*Dowling v. Pontypriid, etc. Rail. Co.* (1874), L. R. 18 Eq. 714).

As to using land acquired for the undertaking for other purposes temporarily, see notes to s. 127, *post*.

**Meaning of the purposes of the undertaking.**—Various questions have arisen as to the construction to be put upon these words in the different classes of undertakings. The principle that land cannot be taken for collateral purposes is the same for all undertakings, whether undertaken for profit or for the benefit of the public, but in the latter case a much more liberal construction is placed upon the statute in construing its purposes (*North London Rail. Co. v. Metropolitan Board of Works* (1859), 28 L. J. Ch. 909).

Where the promoters of a public undertaking have authority from Parliament to interfere with private property on certain terms, any person whose property is interfered with by virtue of that authority has a right to require that the promoters shall comply with the letter of the enactment, so far as it makes provision on his behalf. The court cannot remodel arrangements sanctioned by Parliament, or relax conditions which the legislature has thought fit to

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impose (*Herron v. Rathmines and Rathgar Improvement Commissioners*, [1892] A. C. 498; *Mayor of Liverpool v. Chorley Waterworks Co.* (1852), 2 De G. M. & G. 852).

Where the legislature confers powers on any body to take lands compulsorily for a particular purpose, it is on the ground that the using of that land will be for the public good, and undertakers whether seeking to make profit or acting solely for the public good, cannot enter into a valid contract binding them or their successors not to use those powers (*Ayr Harbour Trustees v. Oswald* (1883), 8 App. Cas. 623; *Staffordshire Canal Co. v. Birmingham Canal Co.* (1866), L. R. 1 H. L. 254; *Mulliner v. Midland Rail. Co.* (1879), 11 Ch. D. 611).

*When undertaking is for profit.*—Companies formed for profit must prove clearly and distinctly from the Act of Parliament the existence of the power which they claim a right to exercise, and if there is any doubt as to the extent of the power claimed by them, that doubt should be construed for the benefit of the landowner, and should not be solved in a manner to give the company any power that is not clearly and expressly given by statute (*Simpson v. South Staffordshire Waterworks Co.* (1865), 34 L. J. Ch. 381; *Webb v. Manchester and Leeds Rail. Co.* (1839), 4 My. & C. 116, 120; *Gray v. Liverpool and Bury Rail. Co.* (1846), 9 Beav. 391; *Lee v. Milner* (1837), 2 Y. & Coll. 611).

Similarly, where the words of a railway company's Act are capable of two interpretations, but the general intent of the legislature is complete indemnification to the party whose land is taken by the company, the court will incline to that construction which will give effect to that intent (*Ex parte Eton College* (1850), 20 L. J. Ch. 1).

The court, however, will not assist persons to avail themselves of any omission in such powers for the purpose of giving effect to exorbitant claims against companies (*Bell v. Hull and Selby Rail. Co.* (1840), 1 Rail. Cas. 616).

Thus, a waterworks company authorised to lay down pipes for the supply of a certain district, will be restrained from laying down pipes for the purpose of supplying water to any parish or place outside the place authorised, although the pipes proposed to be laid will be in part used for the district authorised (*Mayor of Cardiff v. Cardiff Waterworks* (1859), 5 Jur. (n.s.) 953).

A railway company may take land for the purpose of making accommodation works, as they are part of the authorised undertaking (*Wilkinson v. Hull, etc. Railway and Dock Co.* (1882), 20 Ch. D. 323; *Lord Beauchamp v. Great Western Rail. Co.* (1868), L. R. 3 Ch. 745). For cases as to the meaning of "purposes of the undertaking," when the undertaking is a railway, see ss. 6, 16 of the Railways Clauses Act, 1845, and notes thereto, *post*.

*Where undertaking is for the public good.*—Where public bodies are authorised to carry out a public work for the public advantage and without profit, the course has been to authorise them to take compulsorily not only the buildings actually necessary for forming the projected improvements, but also other neighbouring lands and buildings, the value of which and the proper mode of dealing with which the legislature considers to be connected with and dependent upon the projected improvements. These are enumerated either in a schedule to the Act or in a book of reference, and provision is made for the sale or letting of lands not actually required. The courts have, therefore, construed their power to take lands very liberally, the purpose being to enable these public bodies to reimburse themselves by sale of the lands whose value has been increased by the improvements. The courts have accordingly held that these public bodies are at liberty to purchase all the property mentioned in the schedule or book of reference, whether strictly required for the actual improvement or not (*Galloway v. Mayor and Commonalty of London* (1866), L. R. 1 H. L. 34; *Quinton v. Corporation of Bristol* (1874), L. R. 17 Eq. 524).

On that principle an agreement made prior to the Act to sell part of these lands not actually required for the improvement was held valid (*Galloway v. Mayor of London, supra*).

And a similar agreement to exchange land authorised to be taken for other land was held valid in the case of a school board, and they were not restrained

from exercising their compulsory powers to acquire land to be exchanged, the land acquired in exchange being for the benefit of the school (*Rolls v. London School Board* (1884), 27 Ch. D. 639).

But this liberal canon of construction can only be applied when there is some doubt as to what are the purposes of the undertaking, regard being then had to the whole scope of the Act. If the purposes for which land may be taken are clearly defined, then land can be taken for these purposes only. Thus, where a local authority were authorised to take lands for certain street works, and the expression "street works" was defined so as to mean engineering works only, it was held that no more land could be taken than was actually required for widening a street, and that the authority could not take the whole of a property and re-sell part, if part only was to be thrown into the street, even although the whole was shown on the deposited plan and in the book of reference (*Donaldson v. Mayor of South Shields* (1899), 79 L. T. 685).

In *Galloway's Case*, *supra*, the word "street" was construed to mean not only a road or way, but a thoroughfare with houses on both sides. The *prima facie* meaning of "street" is confined to the roadway and footways, and in a question between the London, Chatham and Dover Railway and the city of London as to land which they were both authorised to take, it was held to have the latter meaning, the Act being construed strictly as regards the city (*London, Chatham and Dover Rail. Co. v. Mayor, etc. of London* (1868), 19 L. T. (s.s.) 250).

**Evidence that land required.**—Where there is a reasonable appearance of probability that the land will be required, the evidence of the engineer of the company in the absence of fraud will be sufficient, and the court should be moved from a deluge of affidavits (*Stockton and Darlington Rail. Co. v. Brown* (1860), 9 H. L. Cas. 246; *Kemp v. South Eastern Rail. Co.* (1872), L. R. 7 Ch. 364).

The burden of proving that the land is not *bona fide* required lies upon the party opposing the taking. Absence of *bona fides* can be shown by proving that the land is wanted for some collateral purpose, or that the alleged purpose is absurd (*Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559).

Where the affidavit of the engineer merely stated that the land was or would be required, and did not state for what purpose, and the other side alleged that it could not possibly be required owing to its peculiar shape and position, the court held that it had the right to inquire in the *bona fides*, and the company having declined to give evidence as to the purpose for which they wanted the land, an injunction to restrain them from taking it was granted (*Flower v. London, Brighton and South Coast Rail. Co.* (1865), 34 L. J. Ch. 540).

**II. The promoters must be authorised to take the land.**—By the Standing Orders of Parliament in the cases of local bills where lands are intended to be taken, plans, together with a book of reference thereto, are required to be deposited at the office of the clerk of the council for any county, division, or riding where the lands are situate, and copies of the same are required to be deposited at the private bill office, and in the office of the clerk of the Parliaments.

The local Acts usually authorise the taking of land with reference to these plans and books of reference. The clause is commonly somewhat of this form: "Subject to the provisions and for the purposes of this Act, the promoters of the undertaking may enter upon, take, and use the lands delineated and described in the deposited plans and books of reference, or any of them."

These plans and books, however, are to be regarded only to the extent that the Act refers to them, and for the purpose for which it refers to them, and what is represented upon the plan is only to be looked at in so far as its representation is incorporated in and made part of the Act (*North British Rail. Co. v. Tod* (1846), 12 Cl. & F. 722).

Thus, an Act which incorporated a plan enabling a railway to make bridges over roads of the heights and spans shown on the plan, was held not to require them to make the inclinations of the deviated roads at the rates of inclinations

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shown on the plans (*R. v. Caledonian Rail. Co.* (1850), 16 Q. B. 19; *Attorney-General v. Great Eastern Rail. Co.* (1872), L. R. 7 Ch. 475; *Breynton v. London and North Western Rail. Co.* (1846), 10 Beav. 238; *Beardmer v. London and North Western Rail. Co.* (1849), 1 Macn. & G. 112; *Ware v. Regent's Canal Co.* (1858), 3 De G. & J. 212).

Similarly, delineations or notes on a plan as to proposed works will not enable undertakers to carry out these unless power is taken to do so in the special Act (*Attorney-General v. Great Northern Rail. Co.* (1850), 4 De G. & S. 75; *R. v. Wycombe Rail. Co.* (1867), L. R. 2 Q. B. 310).

On the same principle that the Act alone is to be regarded if the undertakers are authorised to take certain land by the Act, but the name of an owner of an interest in the land is omitted in the book of reference, they will nevertheless be entitled to take it (*Kemp v. West End of London and Crystal Palace Co.* (1855), 1 K. & J. 681).

So also where a corporation served the usual notice on a landlord before applying to Parliament to take his land, and the Act allowed them to take more of his land than was described in the notice, it was held that they were entitled to take the extra land although not described in the notice (*Corporation of Huddersfield v. Jacomb* (1874), L. R. 10 Ch. 92).

In the case of railways, waterworks, and most other public undertakings, errors or omissions in plans and books of reference can, when shown to have arisen from mistake, be corrected by two justices. See, for example, *Railways Clauses Consolidation Act, 1845* (8 & 9 Vict. c. 20), s. 7.

**"Take."**—The words "appropriate and use" in a local Act, empowering a company to "appropriate and use the subsoil and under-surface" for the purposes of a tunnel, were held to be equivalent to taking (*Metropolitan Rail. Co. v. Fowler*, [1893] A. C. 416, 426). The destruction of an easement is not a taking within the meaning of this section. See note "Lands," *supra*, p. 28.

**"Lands delineated."**—Questions have arisen as to whether a piece of land is delineated when some, but not all, of its boundaries are shown on the plan. The answer would seem largely to depend on the facts and plans in each particular case. It is clear that the parts of such lands which fall within the limits of deviation are delineated so that they can be taken (*Finck v. London and South Western Rail. Co.* (1890), 44 Ch. D. 330; *Wrigley v. Lancashire and Yorkshire Rail. Co.* (1863), 9 Jur. (n.s.) 710; *Dowling v. Pontypool, Caerleon, and Newport Rail. Co.* (1874), L. R. 18 Eq. 714; *Protheroe v. Tottenham and Forest Gate Rail. Co.*, [1891] 3 Ch. 278).

As to the limits of deviation, see *Railways Clauses Act, 1845*, ss. 11—15, and notes thereto, *post*.

If the close is a large one and a small part is within these limits, and lines are drawn indicating that it extends beyond the limits, but no line is drawn to indicate either the boundary of the close or the portion intended to be taken beyond the lines of deviation, the undertakers will not be allowed to take such portion, on the ground that it is not delineated (*Protheroe v. Tottenham, etc. Rail. Co.*, *supra*).

If, however, only part of two sides of a parcel of land is omitted, and the part of the land not thereby indicated is small, the whole parcel may be taken as lands delineated (*Dowling v. Pontypool, etc. Rail. Co.*, *supra*).

In the last case (p. 740), HALL, V.-C., stated that he thought "delineated" meant "sketched, or represented, or so shown that the landowner would have notice that the land might be taken." FRY, L.J., however, in *Protheroe's Case*, *supra*, at p. 290, said that HALL, V.-C., had "put as wide an interpretation upon the word 'delineated' as it could possibly bear." It would appear from these cases that if a person entering on the land with the plan and book of reference would not come to the conclusion that the undertakers intended to take that particular piece of land, then such land is not delineated within the meaning of the Act. See also *Wrigley v. Lancashire and Yorkshire Rail. Co.* (1863), 4 Giff. 352.

**"They shall give notice."**—As to service of the notice, see ss. 19, 20.

The giving of the notice to treat to all persons interested is a condition precedent to promoters taking land otherwise than by agreement, except in the

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cases provided for in ss. 84—88, 121, and if they take land without giving such notices or proceeding according to these sections, they may have an action brought against them for ejectment (*Stretton v. Great Western and Brentford Rail Co.* (1870), 5 Ch. App. 751), or they may be restrained from remaining in possession and using the land until they have complied with the provisions of the Act (*Ranken v. East and West India Docks and Birmingham Junction Rail Co.* (1849), 12 Beav. 298; *Martin v. London, Chatham and Dover Rail. Co.* (1866), 1 Ch. App. 501; *Perks v. Wycombe Rail Co.* (1862), 10 W. R. 789); and be made liable in damages for trespass (*Ramsden v. Manchester, etc. Rail. Co.* (1848), 1 Ex. Rep. 723); or to penalties (ss. 89, 90).

Even when the promoters have entered upon the land and completed their works, if by doing so they have committed a trespass, they will be restrained from continuing in possession (*Goodson v. Richardson* (1874), 9 Ch. App. 221, distinguishing *Deere v. Guest* (1836), 1 My. & C. 516).

If, however, a company, acting *bond fide*, take possession of property by mistake, and it is merely a question of value between the company and the owner, the court will not grant an injunction, regard being had also to the injury that may be done to the public by delay thus occasioned in completing the works (*Wood v. Charing Cross Rail. Co.* (1863), 33 Beav. 290, and see *Garrett v. Banstead Rail. Co.* (1865), 13 W. R. 878; *Munro v. Wivenhoe Rail. Co.* (1865), 13 W. R. 880).

Similarly, if a company have purchased land *bond fide*, and a claim is afterwards made by a person asserting an adverse title, and basing it on vague evidence, the court will not grant an injunction (*Webster v. South-Eastern Rail Co.* (1851), 1 Sim. (n.s.) 272).

An injunction was also refused in a case where the landowner had taken the law into his own hands, having pulled down some of the company's works. He was left to his remedies at law (*Lind v. Isle of Wight Ferry Co.* (1862), 1 N. R. 13).

Provision is also made to enable promoters to purchase interests in lands on which they have entered, if, by mistake, they have omitted to purchase them (ss. 124—126).

*Giving a second notice.*—The giving of one notice does not exhaust the power given to a company to take land belonging to a proprietor, and a further notice may be given to take additional lands if described in the schedule or book of reference and required for the undertaking (*Simpson v. Lancaster and Carlisle Rail. Co.* (1847), 15 Sim. 580; *Stamps v. Birmingham, Wolverhampton, and Stour Valley Rail. Co.* (1848), 7 Hare, 251, and see *Williams v. South Wales Rail. Co.* (1849), 3 De G. & S. 354).

Similarly, if a railway company have taken the surface without the minerals, they are entitled to give a second notice to treat for the minerals, if the time for compulsory purchase has not expired. There is no difference between taking horizontal and vertical strata. It is enough if they are necessary for the support of the undertaking (*Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559).

If a notice to treat is served and validly withdrawn by the promoters, the parties are relegated to their original position and the promoters can serve a second notice in regard to the same land or to part of the same land, and if this is in turn validly withdrawn they may serve a third notice and so on as long as the time for compulsory purchase remains unexpired. The service of one notice and its withdrawal do not exhaust their powers (*Ashton Vale Iron Co., Ltd. v. Mayor of Bristol*, [1901] 1 Ch. 591).

*The effect of the notice to treat.*—*Landowner's rights against promoters.*—The service of the notice to treat confers upon the landowner the right to have the value of the land assessed in the manner provided by the statute (see s. 21), and the amount paid to him (*Fotherby v. Metropolitan Rail. Co.* (1866), L. R. 2 C. P. 188; *Rez v. Hungerford Market Co.* (1832), 4 B. & Ad. 327). It does not of itself establish the relation of vendor and purchaser between the promoters and the landowner, to such an extent as to enable the landowner to bring an action for specific performance. His remedy is to compel them to proceed by *mandamus* (see s. 21, note "Compelling promoters to proceed").

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Service of a notice to treat is so far like a contract for sale that the particular lands which the company are to take, and which the landowner must give up, are fixed, and neither party can get rid of the obligation (*Haynes v. Haynes* (1861), 1 Dr. & Sn. 426, p. 456).

Once the price has been fixed the relation of vendor and purchaser has been established, and an action for specific performance will lie, or if the land has been taken, an action may be brought for the price. See s. 6, note "Specific performance," *ante*, p. 14; and s. 36, note "Enforcing the award," and s. 50.

A service of a notice to treat for minerals which are required to be left unworked has the same effect as a notice to treat under this section (*Clippens Oil Co. v. Edinburgh and District Water Trustees* (1901), 3 F. 1113, affirmed H. of L., [1902] W. N. 157).

The service of a notice to treat does not create a debt "due or accruing" under Order 45, r. 3 of the Rules of the Supreme Court, so as to render it liable to be attached by garnishee order (*Richardson v. Elmit* (1876), 2 C.P.D. 9). Such money cannot be attached until the conveyance has been executed (*Howell v. Metropolitan Rail. Co.* (1881), 19 Ch. D. 508).

When the promoters give notice that they propose to take certain land they are bound to have all that land assessed, and cannot summon a jury to assess part of it only. Where there is one entire notice to treat, all the proceedings subsequent to that must have relation to the whole thing comprised in that notice (*Stone v. Commercial Rail. Co.* (1839), 4 My. & C. 122; *Ecclesiastical Commissioners v. Commissioners of Sewers of the City of London* (1880), 14 Ch. D. 305).

Similarly, the owner of two adjoining properties when he receives a notice to treat in respect of one of them and part of the other, cannot treat the notice as severable or as two notices, and proceed *ex parte* to have the value of one of the properties assessed (*Thompson v. Forest Gate Rail. Co.* (1892), 67 L. T. 416).

The warrant issued by the company, under s. 39, to the sheriff to summon a jury must be consistent with the notice to treat, but the irregularity may be waived (*Ex parte Bailey* (1852), Bail Ct. Cases, 66, and see note to s. 39, *post*).

A prior agreement by a landowner to sell to the promoters may, perhaps, be waived by service of notice to treat, as such service is a putting into operation of compulsory powers, and in a case where it was followed by entry under s. 85, PAGE WOOD, V.-C., held that such proceedings assumed that no such agreement existed, and specific performance thereof was refused (*Bedford and Cambridge Rail. Co. v. Stanley* (1862), 2 John. & H. 746).

But in a case where the company had blundered as to their method of procedure, and had served a notice to treat which neither the company nor the landowner had treated as valid, the previous agreement was not considered to be waived (*Kemp v. South Eastern Rail. Co.* (1872), L. R. 7 Ch. 364, 373).

The service of a notice to treat is not equivalent to requiring possession under s. 121. A tenant who has merely received a notice to treat cannot have his property assessed under that section (*R. v. Stone* (1866), L. R. I. Q. B. 529, and see *R. v. Kennedy*, [1893] 1 Q. B. 533, cited *infra*).

The service of the notice to treat fixes the date at which the rights of the various persons interested in the land are to be determined for purposes of compensation. The scheme of the Act is that any man's interest shall be valued *rebus sic stantibus*, just as it occurs at the very moment when the notice to treat was given. See *per* KINDERSLEY, V.-C., in *Penny v. Penny* (1867), L. R. 5 Eq. 227, p. 236. Where a waterworks company by notice under s. 22 of the Waterworks Clauses Act, 1847, require an owner of mines to leave the minerals unworked, the compensation is not to be assessed on the basis that the coal is purchased, but the question is what would the colliery company have made out of the coal during the time it would have taken them to get it. An unexpected rise in the price after the date of the notice may therefore be taken into account. Had it been a purchase of the minerals, the question would appear to be as to the value of the coal at the date of the notice to treat (*In re Bullfa and Merthyr Dare Steam Collieries* (1891) and *Pontypridd Waterworks Co.*, [1903] A. C. 426, reversing the Court of Appeal, [1902] 2 K. B. 135, where it had been held that the basis was the same as on a purchase).

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Similarly, where a lessee holds land under a lease terminable on notice at certain fixed dates, and he receives a notice to take the land, the arbitrator must consider the value just before the notice is given, taking into account the probability of the lease being determined or not (*In re Athlone Rifle Range*, [1902] 1 I. R. 433).

In a case where a railway company were required to give six months' notice of their intention to take any tenement to the person rated in respect of such tenement, the company were held bound on having given such a notice to proceed with the purchase of the premises within a reasonable time, and it was held that the plaintiffs were entitled to a *mandamus*, and to substantial damages by reason of the company having neglected to do so. The notice was not considered a sufficient notice under s. 18, but to have the same effect (*Morgan v. Metropolitan Rail Co.* (1868), L. R. 4 C. P. 97).

When such a notice is required to be given, the period at which the notice is given is the period to which all questions relating to the right to compensation must be referred. It is the date with reference to which the tenant's interest is to be determined (*Tyson v. Mayor of London* (1871), L. R. 7 C. P. 18).

But in a case where notice to treat had been given to a lessee who had a thirty years' lease determinable under certain conditions by a three months' notice, and after the notice to treat the lessor so determined the lease, and no further steps under the notice to treat were taken, but in fourteen months after the railway company required and took possession under s. 85, it was held that as no proceedings had been taken under the notice to treat, the fact that it had been given was immaterial, and that the value of the tenant's interest was to be determined from the date of requiring possession under s. 85 (*R. v. Kennedy*, [1893] 1 Q. B. 533, explained in *Bealey Heath Rail. Co. v. North*, [1894] 2 Q. B. 579).

An owner of certain dilapidated houses, while putting them in repair, was informed that a provisional order had been obtained enabling the corporation of the city to acquire them compulsorily, and that the order was about to be confirmed by Act of Parliament. He continued his repairs and refused to stop, and upon a case stated the court were of opinion that he was entitled to the sum expended thereon, and that the judge's instruction to the jury that if they considered the owner's outlay as repairs not *bond fide*, but for the purpose of making an inflated claim for compensation they should disallow it, was wrong in law (*Higgins v. Mayor of Dublin* (1891), 28 L. R. Ir. Q. B. 484).

*Effect on owner's rights of dealing with the land.*—The effect of the notice is that the promoters are bound to take and the owner to give up the property. Thus, the owner, who after the service of the notice proposed to put the property up for sale by auction, was restrained from so doing (*Metropolitan Rail. Co. v. Woodhouse* (1865), 13 W. R. 516).

When a person becomes a purchaser of an interest in land after notice and after possession had been given, he is merely a purchaser of an interest in the purchase money. He cannot restrain the promoters from continuing in possession (*Carnochan v. Norwich and Spalding Rail. Co.* (1858), 26 Beav. 169).

It has been held that an owner who has been served with a notice to treat can sell his land so long as no new interest is created to the prejudice of the promoters (*Sewell v. Harrow and Uxbridge Rail Co.* (1902), 19 T. L. R. 130). On appeal the case was settled, no opinion being expressed on the point ("Times," November 6th, 1903).

The land being bound by the service of the notice to treat, a lease for years granted subsequently to that period by the owner to a former weekly tenant cannot be the subject of compensation (*In re Marylebone Improvement Act, Ex parte Edwards* (1871), 12 Eq. 389).

A landowner, however, is not prevented from dealing with his adjoining land, but the persons who acquire subsequent interests cannot recover for injurious affection to such interests, even if they have purchased without notice of the service of the notice to treat, etc., before the compensation has been assessed. The service of such a notice creates legal rights in and to land, and binds all persons taking it whether with notice or not (*Mercer v. Liverpool, St. Helens and South Lancashire Rail Co.*, [1903] 1 K. B. 652).

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A requisition under s. 6 of the Schedule to the Dwellings Improvement Act, 1875 (now repealed and re-enacted by the Housing of the Working Classes Act, 1890), was held equivalent to a notice to treat, and no compensation was allowed for a lease granted after such notice (*Wilkins v. Mayor of Birmingham* (1883), 25 Ch. D. 78).

Where the titles of the various parties are doubtful the court will endeavour to keep the interests in the same situation in which they stand until the rights of the parties are determined (*London and South Western Rail Co. v. Coward* (1848), 5 Bail. Cas. 703).

Where a lease has been granted with power of resumption for the purpose of building, the reversioner cannot after the notice to treat give a notice to resume possession for the purpose of conveying it to the railway (*Johnson v. Edgware Rail. Co.* (1866), 14 L. T. (N.S.) 45).

But if land is let as a park with a proviso that if any part should be taken compulsorily it should be lawful for the lessors to re-enter, then the lessors on receipt of a notice to treat can treat the lands as free from the lease (*In re Morgan and the London and North Western Rail. Co.*, [1896] 2 Q. B. 469).

**"To all the parties interested."**—*Equitable Interests.*—It is the duty of undertakers to serve a notice upon mortgagees of the land as well as upon the landowner, whether the mortgagees are legal or equitable (*Martin v. London, Chatham and Dover Rail. Co.* (1866), 1 Ch. App. 501).

And where persons have a species of lien or equitable right over land, it is an interest in land, and they should receive notice (*Rogers v. Kingston-on-Hull Dock Co.* (1864), 11 L. T. (N.S.) 463).

Where a lessee for a number of years agreed, partly in writing and partly verbally, to sublet certain premises at a certain rent and not to raise the rent or give notice to quit as long as the rent due was paid, and to let the sub-lessee remain in the premises to the end of the term, it was held that the sub-lessee was entitled to the whole lease and that the Statute of Frauds was no bar in equity to his claim, and that he was entitled to have the assessed value of the lease paid to him (*In re King's Leasehold Estates* (1873), L. R. 16 Eq. 521, and see also *Sweetman v. Metropolitan Rail Co.* (1864), 1 H. & M. 543).

Similarly, if a person is in possession of land under a building agreement determinable if not completed by a certain date, and prior to that date the owner tells him to suspend building operations because of the probability of the land being wanted by a railway company, and after the date for completion the railway take possession under s. 85, the person who had the building agreement will have an interest in the land because the landlord by directing him to suspend building operations has raised an equity against himself to prevent him ejecting, and the railway take, subject to that liability, and the occupier is entitled to have his interest assessed (*Birmingham and District Land Co. v. London and North Western Rail. Co.* (1888), 40 Ch. D. 268).

Where a company have bought a prior incumbrance under a power of sale contained in the mortgage deed, and have thus acquired the legal estate, the right of a subsequent mortgagee is not to recover payment of arrears against the company, but, apparently, his right is against the money in the hands of those who sold the legal estate (*Hill v. Great Northern Rail Co.* (1854), 5 De G. M. & G. 66).

**Tenants' interests.**—It would seem that if after the notice to treat has been served a new tenant takes possession without notice that notices have been served, he will be entitled to a notice to treat (*Carter v. Great Eastern Rail. Co.* (1863), 8 L. T. (N.S.) 197, and see also *Re Arbitration between Chilworth Gunpowder Co. v. Manchester Ship Canal Co.* (1891), 8 T. L. R. 79). Compare, however, the judgment of the Court of Appeal in *Mercer v. Liverpool, St. Helen's, etc., Rail. Co.* (1903), 19 T. L. R. 210.

Where a dock belonged to a certain company, but was managed with another dock by a joint committee under a statute, the joint committee was held to have such an interest as entitled them to compensation on the principle of the cases of the *Duke of Buccleuch v. Metropolitan Board of Works* (1872), L. R. 5 H. L. 518, and *Cowper Essex v. Acton Local Board* (1889), 14 App. Cas. 153 (*London and India Docks Co. v. North London Rail. Co.*, Times, Feb. 6, 1903).

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When promoters have by agreement acquired a certain amount of land from a lessor the lessee cannot insist on the promoters giving him notice to treat for the same amount if for the time being they do not require it (*Stevenson v. North British Rail. Co.* (1901), 4 F. (Ct. of Sess. Cas.) 224).

Notices need not apparently be served upon tenants having no greater interest in land than for a year or from year to year. \* They receive notice to give up possession under s. 121. It is also open to the promoters to purchase the reversion and determine these short tenancies by notice to quit without any compensation (*Syers v. Metropolitan Board of Works* (1877), 36 L. T. (N.S.) 277, and see per JESSEL, M.R., p. 278), or the owner may serve the notice to quit for the purpose of transferring the possession to the promoters, and the tenant will also be without any right of compensation (*Ex parte Nadin* (1848), 17 L. J. Ch. 421).

Where a railway company acquired from the lessor part of certain lands held as a clay field under a lease which provided that the proprietor should be "entitled to resume and except from the clay field any part of the lands at his pleasure," it was held that the company had no power to exercise this power of resumption so as to defeat the tenant's right to compensation (*Solway Junction Rail. Co. v. Jackson* (1874), 1 Ct. of Sess. Cas. (4th series), 831).

The above case was approved by the House of Lords, where the principle was laid down that the compulsory taking by promoters under their statutory powers of part of a superior's estate, cannot be regarded in law or in fact as equivalent to an exercise of a power reserved by the superior himself (*Fleming v. Newport Rail. Co.* (1883), 8 App. Cas. 265 (Sc.)).

A landlord who has granted a lease with a proviso that he may resume any part of the land demised in case it should be required by him "for the purpose of building, planting, accommodation, or otherwise" is not entitled under such proviso to resume possession of land required by a railway company under their statutory powers, so as to defeat the tenant's right to compensation, the word "otherwise" in the proviso being construed *ejusdem generis* (*Johnson v. Edgware, etc. Rail. Co.* (1866), 35 Beav. 480).

The right to sink a pit shaft in land of which the surface is taken is an interest in land, and the fact that the right is subject to the reasonable approval of the lessor or his assigns does not enable a railway company who have acquired the surface to withhold such approval merely because they desire to make a railway on it, and so defeat the right to compensation of the lessee (*In re Masters and the Great Western Rail. Co.*, [1901] 2 K. B. 84).

These rights of lessees in land, however, are not necessarily the proper subject of a notice to treat, and the remedy of the lessee may be for injurious affection under s. 68. See *Great Western Rail. Co. v. Swindon and Cheltenham Rail. Co.* (1884), 9 App. Cas. 787, p. 880.

**Easements.**—See note, "Lands," *supra*, p. 28.

**Not an interest in land.**—A right for directors to use a room at certain times for certain purposes and for a certain clerk to use a desk in an office does not in either case constitute a tenancy so as to give a right of compensation (*Municipal Freehold Land Co. v. Metropolitan and District Rail. Co.* (1883), 1 C. & E. 184).

The land under a public street may not be a matter for compensation if the special Act so provides, and a *cul-de-sac* will be for this purpose a public street if there is evidence of dedication (*Souch v. East London Rail. Co.* (1873), 16 L. R. Eq. 108).

Under the following circumstances, the claimants were held to have no interest in land so as to entitle them to compensation under the Lands Clauses Acts. A railway company had taken lands under which pipes belonging to a water company were laid, and which were at the time used for supplying water. The railway company constructed an embankment and the pipes ceased to be used. Later, the railway company made a tunnel through the embankment, and in doing so, broke up and removed the pipes. The water company's claim was considered to be one for chattels only (*New River Co. v. Midland Rail. Co.* (1877), 36 L. T. 539).

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Provision is made in the Lands Clauses Act as to how various interests are to be dealt with, as follows :

**NOTE.**

Sections 95—98.—Copyhold interests.

Sections 99—107.—Rights over commons.

Sections 108—114.—Rights of mortgagees.

Sections 115—118.—Various classes of rentcharges.

Sections 119—123.—Rights of lessees.

**"Parties enabled by this Act to sell."**—As to these, see ss. 7, 8, and the notes thereto.

**"Shall demand the particulars of their interests."**—Although the notice to treat must demand these particulars, the parties interested are not bound to supply them. See s. 21 and notes.

If such particulars are delivered by the landowner they should state both the quality and quantity of his estate. See note to s. 21.

**"And every such notice shall state."**—No particular form of words is required, but it is usual to accompany the notice with a diagram or plan showing the scale of admeasurement. Such a scale, however, is unnecessary provided the notice accurately points out the quantity and position of the land proposed to be taken (*Sims v. Commercial Rail. Co.* (1838), 1 Rail. Cas. 431).

A common form is that given in *Dowling v. Pontypool Rail. Co.* (1874), L. R. 18 Eq. 714, at 745 : "The lands, of which the particulars are contained in the schedule hereto, with the appurtenances, and which said lands so required are, for the better description thereof, delineated on the plan attached hereto or delivered therewith, and are thereon distinguished by a red colour."

In that case the deposited plans and books of reference showed a small plot, No. 38, nearly surrounded by a large plot, No. 37. The schedule to the notice to treat mentioned No. 37, but not No. 38, and the accompanying plan omitted the boundary to No. 38 and the number, but the part coloured red included No. 38. This was held a sufficient notice to entitle the company to take No. 38.

A mistake on the face of a plan by which land intended to be taken is omitted, will prevent the company from entering on such land (*Kemp v. London, Brighton and South Coast Rail. Co.* (1839), 1 Rail. Cas. 495, 506).

In cases of railways and waterworks, where the promoters are not bound to purchase the minerals, the notice should state whether they are to be taken or not (Railways Clauses Act, 1845, ss. 77—85).

Where railways require to take land for temporary purposes, fuller information is required in the notice. See Railways Clauses Act, 1845, ss. 32, 33, *post*.

See forms in Appendix.

**Execution and Stamp.**—In the case of companies whose Acts incorporate the Companies Clauses Act, 1845 (8 & 9 Vict. c. 16), the notice may be executed under s. 139 of that Act, which is as follows :

"Every summons, notice, or other such document, requiring authentication by the company, may be signed by two directors, or by the treasurer or the secretary of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print."

Otherwise the notice should be authenticated by the corporate seal or in the manner provided by the special Acts. See notes to s. 6.

Where a railway company served a notice to treat, and persons in their employment obtained the vendor's signature to a printed form of agreement fixing the sum to be paid for the land, it was held that neither the notices to treat nor the agreement need be under seal, and specific performance was decreed against the company (*Smith v. Dublin and Bray Rail. Co.* (1853), 3 Ir. Ch. Rep. 225).

The notice to treat requires no stamp, and in a case where, after the jury had assessed the value, specific performance was decreed of the contract to

take the property, the court ordered the minutes to be drawn up without any stamp (*Rawlings v. Metropolitan Rail. Co.* (1868), 37 L. J. Ch. 824).

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**NOTE.**

**How validity of notice affected.—I. By time.**—By s. 123 of this Act (see *post*), it is provided that the limit of time during which the promoters of an undertaking may exercise their compulsory powers to take land shall be the time prescribed in the special Act, and if no time is prescribed, then within a period of three years. There is usually a further provision in the special Act as to the time within which the works must be completed.

A notice to treat must be given before the time for exercising the compulsory powers has expired. It may be given the day before these powers expire. If it is given within that time, it will remain valid, at least so far as mere delay can affect it, until the time for completing the undertaking has expired (*Richmond v. North London Rail. Co.* (1868), L. R. 3 Ch. 679; *Kemp v. South Eastern Rail. Co.* (1872), L. R. 7 Ch. 364, 372).

It will still remain valid until the end of the time for completion, although that time is extended by a new Act of Parliament (*Yatalyferu Iron Co. v. Neath and Brecon Rail. Co.* (1873), 17 Eq. 143).

If the time for compulsory purchase is extended, the notice, of course, is valid if given before its expiration (*Bentley v. Rotherham and Kimberworth Local Board* (1876), 4 Ch. D. 588).

If the promoters have within the time limited for acquiring land, given a notice to treat, but have not proceeded thereunder until after that time, they may nevertheless proceed to have the value of the land assessed, although the time has expired. A landowner likewise may obtain a *mandamus* to compel them to proceed (*R. v. Birmingham and Oxford Junction Rail. Co.* (1850), 15 Q. B. 634, over-ruling *Brocklebank v. Whitehaven Junction Rail. Co.* (1847), 5 Rail. Cas. 373; see 15 Q. B. 647).

Similarly if a notice to treat has been given before the expiration of the time for compulsory purchase, the company can proceed under s. 85, and enter upon the land after that time, the ground of this decision being that the right to enter and use under that section was not one of the powers for the compulsory purchase of lands (*Salisbury v. Great Northern Rail. Co.* (1852), 17 Q. B. 840).

And they may do so whether the works can or cannot be completed within the time limited for the completion of the works (*Tiverton and North Devon Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480).

In the last case the question was discussed as to whether proceedings could be taken upon a notice to treat, after the time for completion of the works had expired, and although no decision was necessary on the point, an expression of opinion was given that if a company delays completing till it can no longer exercise the powers for the sake of which it was entrusted with the power of compulsory purchase, the *quasi* contract caused by giving a notice to treat should, at least at the option of the landowner, be at an end, unless perhaps the delay can be explained. A landowner might, however, compel them, after the expiration of the time limited for completion of the works, to proceed to have the *quasi* contract completed, unless he had improperly delayed his application for a *mandamus* (*ibid.*, pp. 489, 496, 497).

Where the notice to treat is given before the expiry of the period for exercising compulsory powers, and the owner gives a counter-notice after the expiry of such period, the company may proceed to have the value assessed of the whole property under the counter-notice (*Pinchin v. London and Blackwall Rail. Co.* (1854), 1 K. & J. 36; *Schwinge v. London and Blackwall Rail. Co.* (1855), 24 L. J. Ch. 405).

As to counter-notice, see this note, *infra*.

**II. By revocation.**—When the promoters have given notice to take land, they cannot withdraw it without the concurrence of the landowner, or unless a counter-notice has been served upon them under s. 92 (which see *post*, and this note, *infra*) (*Tawney v. Lynn and Ely Rail. Co.* (1847), 16 L. J. Ch. 282; *R. v. Hungerford Market Co.* (1832), 4 B. & Ad. 327).

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If they withdraw a notice and serve another requiring a less quantity of the land than that mentioned in the first notice, they will be restrained from proceeding under the second notice (*Tawney v. Lynn and Ely Rail. Co.* (1847), 16 L. J. Ch. 282).

Similarly if they proceed under s. 85, to enter and take possession of a portion only of the lands which they have given notice to take, they will be restrained by injunction (*Barker v. North Staffordshire Rail. Co.* (1848), 2 De G. & Sm. 55).

Where the company gave notice to the owner and entered into possession by agreement with the occupying tenant, without paying the purchase money or giving security under s. 85, the company were restrained from proceeding with their works, and ordered to restore the land to its former condition, but opportunity was given them to satisfy s. 85 (*Armstrong v. Waterford and Limerick Rail. Co.* (1846), 10 Ir. Eq. Rep. 60).

The same rule applies equally to trustees under an Act of Parliament carrying out a public purpose, and to companies formed for private gain (*Steele v. Corporation of Liverpool* (1866), 7 B. & S. 261; *Birch v. Vestry of St. Marylebone* (1869), 20 L. T. (N.S.) 697).

It does not, however, apply to commissioners appointed under a public Act to do certain things on behalf of the Crown, for the benefit of the public, and having a limited power of taking land, provided the required quantity can be obtained for a given sum. Such commissioners have been held entitled to withdraw a notice to treat, where it was given to ascertain whether the land could be purchased for the given sum (*R. v. Commissioners of Woods and Forests* (1850), 15 Q. B. 761). See this case discussed in the two last mentioned cases.

III. *By counter-notice.*—When promoters give notice to take part of a property, the owner may, in the cases mentioned in s. 92, give a counter-notice requiring them to take the whole. The company are not bound to take the whole; they may abandon their notice and refuse to take the part (*King v. Wycombe Rail. Co.* (1860), 28 Beav. 104; *R. v. London and South Western Rail. Co.* (1848), 12 Q. B. 775; *R. v. London and Greenwich Rail. Co.* (1842), 3 Q. B. 166; and see note to s. 92).

When the landowner has delivered a counter-notice its effect is to suspend the original notice until it is ascertained whether the company will take the whole property or not. Until the company signify their intention either to take the whole or abandon their original notice, the landowner may withdraw his counter-notice, in which case the original notice remains in force (*Pinchin v. London and Blackwall Rail. Co.* (1854), 1 K. & J. 36).

If the company abandon their notice to treat on receipt of a counter-notice, the subsequent withdrawal of the counter-notice will not revive the original notice (*Ex parte Quick* (1865), 12 L. T. (N.S.) 580). The parties are relegated to their original position, and the promoters can again serve a fresh notice in respect of the same land (*Ashton Vale Iron Co., Limited v. Mayor of Bristol*, [1901] 1 Ch. 591).

On receipt of the counter-notice there must be some step taken by the company which amounts to a signification of their intention to abandon or to take the whole. If they decide to take the whole, it is not necessary that they should deliver a second notice under s. 18 to treat for the whole. The notice, counter-notice, and assent to take the whole are sufficient to constitute the quasi contract binding the company to take the whole (*Schwinge v. London and Blackwall Rail. Co.* (1855), 24 L. J. Ch. 405).

Although on receipt of a counter-notice to take the whole, the company proceed under s. 36 of the Railway Companies Act, 1867, to apply to the Board of Trade for the appointment of a surveyor to determine the value of the property comprised in the notice and counter-notice, this proceeding on their part is not such a signification of their intention as binds them to take the whole of the property and they are still at liberty to withdraw their notice to treat (*Grierson v. Cheshire Lines Committee* (1874), L. R. 19 Eq. 83).

So also the service of a notice asking the owner to appoint an arbitrator to assess the compensation in respect of the property mentioned in the notice to treat is not a step preventing the promoters from withdrawing the notice (*Ashton Vale Iron Co. v. Mayor of Bristol*, [1901] 1 Ch. 591, p. 601).

Where the counter-notice is invalid the company may disregard it, and proceed at once under their notice to treat, and they are not bound to wait till a valid counter-notice is served upon them (*Harvie v. South Devon Rail. Co.* (1874), 32 L. T. (N.S.) 1; *Tiverton and North Devon Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480, and see *S. C.* 22 Ch. D. 25).

Where a company have served an invalid notice to treat and the landowner has given a valid counter-notice, and the company proceed with their works on the faith that the landowner is willing to sell the whole, the company will not be restrained from proceeding to take steps to purchase the whole (*Pinchin v. London and Blackwall Rail. Co.* (1854), 24 L. J. Ch. 417).

The acceptance by the solicitors of a company of a bad counter-notice under s. 92 will not bind the company who may proceed to have the value assessed of the land mentioned in their original notice (*Treadwell v. London and South Western Rail. Co.* (1884), 51 L. T. (N.S.) 894).

IV. *Estoppel*.—The conduct of either of the parties may prevent them from setting up the validity or invalidity of the notice to treat.

Thus, where a company entered upon a man's land and in an action of ejectment denied his title and stated that he was unable to identify his land, and that, therefore, they were unable to give any notice to treat, they were, in a future proceeding in Chancery to restrain them from using the land, held to be estopped from setting up a right to enter an alleged notice to treat previously given (*Stretton v. Great Western Rail. Co. and Brentford Rail. Co.* (1870), L. R. 5 Ch. 751).

So in a case where a company had given notice to treat and having taken no proceedings for fourteen months gave the landowner notice of an intended application to abandon the undertaking, and some months after proceeded to obtain the lands compulsorily, they were restrained, on the ground that they led the landowner to believe that they had abandoned, and had induced him to forbear taking proceedings (*Hedges v. Metropolitan Rail. Co.* (1860), 28 Beav. 109).

A landowner may be estopped from disputing the validity of a notice to treat if he is aware of the alleged invalidity and delays for some months to raise the question (*Lynch v. Commissioners of Sewers* (1886), 32 Ch. D. 72), or if he has agreed to waive the notice (*R. v. South Holland Drainage Committee* (1838), 8 Ad. & E. 429).

The promoters who should have given the notice cannot after the compensation has been assessed at their request, allege the want of notice (*R. v. Trustees of Swansea Harbour* (1839), 8 Ad. & E. 439).

Where a railway company after the compulsory powers of their original Act have expired and after the railway has been opened for traffic obtain another Act enabling them to widen their line and for that purpose to take additional lands, they cannot proceed to take a piece of land for this purpose under a notice to treat given previously under their original Act and not then proceeded with, although the land may have been scheduled in both Acts. The object of the company was to obtain the land without paying for the interests created in the interval, but it was held that under the first Act they were only authorised to take land for the purposes of that Act and not for a purpose under a later Act (*Richmond v. North London Rail. Co.* (1868), L. R. 3 Ch. 679).

**The compensation to be made.**—The methods for assessing compensation pursuant to this section are provided in ss. 21—67. For the principles of compensation to be made for lands taken, and for the damage caused to lands held therewith by severance or other injurious affection, see ss. 49, 63, and the notes to s. 63. For the principles of compensation in other cases, see notes to s. 68.

Sect. 18.

NOTE.

**Sect. 19.**

Service of  
notices on  
owners and  
occupiers of  
lands.

**19.** All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry (a), shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

(a) See s. 58 as to how compensation is to be determined in such cases.

**"Parties entitled to sell."**—Persons under disability are enabled to sell under s. 7, and the persons there mentioned would be the proper persons to be served under this section, but in cases where persons have been enabled to sell by reason of subsequent statutes, the promoters have a discretion. See notes to s. 7.

Special Acts sometimes make provisions for service on particular persons, and the provisions must be strictly complied with; service on any other person would not be valid (*Earl of Harrington v. Metropolitan Rail. Co.* (1865), 13 L. T. (N.S.) 658).

**"Last usual place of abode."**—In a case under similar provision in the Summary Jurisdiction Act, 1848, it was stated that the word "last" means the then present place of abode if he has any, and the last which he had if he has ceased to have any (*Ex parte Rice-Jones* (1850), 19 L. J. M. C. 151).

**"Absent from the United Kingdom."**—If the owner cannot be found compensation is assessed and paid into the bank pursuant to ss. 58—67. If the owner on his return is not satisfied he can have the amount assessed by an arbitrator (s. 64).

**"Left with the occupier."**—If parties are insisting on their rights under this statute, the modes in which service can be effected are those contained in this section and no others. Service on an occupier of land will not do unless it turns out that the owner after diligent inquiry cannot be found, or is out of the United Kingdom (*Shepherd v. Corporation of Norwich* (1885), 30 Ch. D. 553).

Where the notice deals with land in the several occupation of more than one tenant, the notice for the owner must be served on all the occupiers; service on the occupier of part of the land is not sufficient; the notice so served on the occupiers should show that it is for the owner (S. C.).

It would appear also that service on an agent authorised to accept service could not be effected so as to bind the principal (S. C., p. 573).

A notice improperly served does not bind the landowner, and, it would appear, does not bind the promoters (S. C., p. 573).

And similarly a notice served on a landlord does not bind his tenant, and does not, therefore, as regards the tenant bind the promoters (*R. v. Great Northern Rail. Co.* (1876), 2 Q. B. D. 151).

Service of  
notice on a  
corporation  
aggregate.

**20.** If any such party (a) be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such

lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands. Sect. 20.

(a) *Party*.—This refers to the parties mentioned in s. 19.

“*Left with the occupier.*”—See note to s. 19, *supra*.

21. If for twenty-one days after the service of such notice (a) any such party (b) shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree (c) as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special Act enabled to sell (d), or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

If parties fail to treat or in case of dispute, question to be settled as after mentioned.

(a) That is, the notice mentioned in s. 18.

(b) That is, the party interested in or entitled to sell. See s. 18.

(c) With respect to the purchase of lands by agreement, see ss. 6—15.

(d) See s. 7.

“**Twenty-one days.**”—This period, it would appear, does not apply to a counter-notice under s. 92, and the promoters would apparently not be bound to wait twenty-one days after assenting to take the whole property provided a fair opportunity was given to the landowner to agree as to a price (*Schwinge v. London and Blackwall Rail. Co.* (1855), 1 Jur. (N.S.) 368).

“**The particulars of his claim.**”—The notice to treat usually states that if the particulars are not delivered within twenty-one days the promoters of the undertaking will proceed to have the amount assessed pursuant to this section. The section, however, does not make it compulsory on the landowner to supply these particulars. If he desires to proceed to arbitration under s. 23 or s. 68, he must deliver particulars similar to those required by this section (see these sections). In certain local Acts an owner is compelled to give particulars of his interest.

These particulars must be such as will enable the company to ascertain the true value of the lands, and so offer the party interested proper compensation. When the land is to be taken they should state both the quantity and quality of the owner's interest, and merely to describe it as “leasehold” is not sufficient (*Healey v. Thames Valley Rail. Co.* (1864), 5 B. & S. 769, 778. See (1866), 7 B. & S. 836).

In a case, however, where the plaintiff claimed as mortgagee in possession of certain houses, which were alleged to be injuriously affected, and both parties referred the matter to arbitration, and it was shown the premises were let and that the plaintiff had only a reversionary interest, on an action on the award, while it was held that these particulars were insufficient, it was also held that as the company, instead of regarding the claim as insufficient, proceeded to arbitration, they must, therefore, be taken to have waived such objection (*Lovering v. City of London and Southwark Subway Co.* (1891), 7 T. L. R. 600).

Where, however, the claim was for damages for loss of business which had occurred during the construction of the works, it was held that a state-

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ment by a claimant that he was "occupier" and that he carried on his business of a baker on the premises was sufficient, as it enabled the company to determine the fairness and propriety of the claim (*Cameron v. Charing Cross Rail. Co.* (1864), 16 C. B. (N.S.) 430, discussed in *Healey v. Thames Valley Rail. Co.*, *supra*).

In a case where a lessee had agreed not to raise the rent or give notice to quit to an under-tenant so long as he paid the rent due during the period of his own lease, particulars by the under-tenant of his interest described as "held for any term at tenant's option, but not beyond the term and interest of A., which term will expire in 1881," was regarded apparently as sufficient (*In re King's Leasehold Estates, Ex parte East of London Rail. Co.* (1873), L. R. 16 Eq. 521). See *Falconer v. Aberdeen Rail. Co.* (1853), 15 Sc. Sess. Cas. (2nd series), 352.

Where trustees in their notice stated that they had and claimed "an estate and interest in certain copyhold lands and hereditaments," the court were of opinion that this description was not conformable to the statute (*Re Arbitration, North Staffordshire Rail. Co. v. Lauder* (1848), 17 L. J. Ex. 350).

As to service of such particulars, see s. 134.

**"Or for any damage."**—As to what damage is to be taken into account in assessing the value of land taken, see ss. 49, 63, and the notes to s. 63. As to damage to land when no land is taken, see s. 68 and notes.

**"Shall be settled in manner hereinafter provided."**—The methods provided by the Lands Clauses Acts for determining the amounts in cases of disputed compensation are four:

I. *By justices*—

(a) When the amount claimed does not exceed £50 (ss. 22, 68).

(b) When a person having no greater interest than as tenant for a year or from year to year is required to give up possession under s. 121.

The procedure before justices is provided by ss. 24, 63.

II. *By arbitration*—

(a) When the claimant desires arbitration (ss. 21, 23, 68), except in the cases where justices have jurisdiction, *supra*, and even in these cases if both parties consent to it.

(b) In the case of an owner out of the United Kingdom under s. 64.

(c) In case of a dispute as to price when anyone exercises his right to pre-emption of superfluous lands under s. 130.

The procedure in arbitrations is dealt with in ss. 25—37, 63, and in the Arbitration Act, 1889.

III. *By a jury*—

(a) Excluding the cases where justices have jurisdiction, s. 23 provides that the question shall be settled by the verdict of a jury when the claimant does not desire arbitration, or if the matter has been referred and the arbitrators or umpire shall for three months fail to make their award, or if no final award shall be made (*post*, p. 49).

(b) Under s. 68, where the amount exceeds £50 and the claimant gives notice of his desire to have the amount settled by jury (*post*). See note to s. 38, *post*, p. 73.

The procedure for settling questions by the verdict of a jury is dealt with in ss. 38—57.

In the case of railways, when the question is under the Land Clauses Act to be settled by the verdict of a jury, the company or claimant may apply to a judge of the High Court, who may make an order to have the question tried by a jury in the superior court (31 & 32 Vict. c. 119, s. 41; see *post*).

IV. *By a surveyor appointed by justices—*

- (a) When a person is prevented from treating by reason of absence from the United Kingdom (s. 58).
- (b) Or when a person, after diligent inquiry, cannot be found (s. 58).
- (c) When a person does not appear at the time appointed for the inquiry before a jury (ss. 47, 58).
- (d) In case of common lands when no committee is appointed to deal with the promoters (s. 106).

The procedure for settling the compensation by surveyors is dealt with in ss. 58—63.

When promoters are desirous of entering upon lands before the amount has been agreed or assessed, the amount to be deposited may be settled by a surveyor (s. 85).

Sections 94, 96, 105, 112, 114, 115, 124 provide that compensation for the special interests therein respectively referred to shall, in case of dispute, be settled as in other cases of disputed compensation.

**Compelling promoters to proceed.—*Mandamus.***—When the notice to treat has been given, and the promoters of the undertaking do not proceed to have the amount of compensation settled as provided, the proper mode of procedure is for the landowner to apply to the High Court for a *mandamus* to compel them. This may either be done by motion for a prerogative writ of *mandamus*, which can only be granted by the King's Bench Division (for procedure, see Crown Office Rules, 1886, rr. 60—80 in Appendix), or by an action of *mandamus* under Order 53 of the Rules of the Supreme Court (see Appendix), either in the Chancery or King's Bench Division. The prerogative writ, however, will not be granted if the court are of opinion that an action of *mandamus* is as convenient a mode of proceeding as by the prerogative writ (*R. v. Lambourn Valley Rail. Co.* (1888), 22 Q. B. D. 463; *R. v. London and North Western Rail. Co.* (1896), 74 L. T. 624).

The above case of *R. v. Lambourn Valley Rail. Co.* was explained in *R. v. London and North Western Rail. Co.*, [1894] 2 Q. B. 512, at p. 518. It would unduly narrow the powers of the court to say that it is an answer to any application for a prerogative writ of *mandamus* that a *mandamus* could have been granted for the same purpose in an action. A prerogative writ of *mandamus* ought to be granted for the purpose of speedy justice or other reasons, in which it would be uncertain whether it was possible to achieve the same results in any other way, and if it were possible would take much time and difficulty. Motion for a prerogative writ of *mandamus* would, therefore, as being the more expeditious remedy, appear to be the proper remedy under this section, as, according to the above case, it was held to be the proper remedy to compel promoters to take up an award under s. 35. In *London and North Western Rail. Co. v. Walker*, [1900] A. C. 109, the House of Lords granted a *mandamus* under that section.

The application for a prerogative writ of *mandamus* cannot be made by a party in person. Counsel must be instructed, and the same rule holds on appeal. It would appear doubtful whether the rule *nisi* can be obtained in person (*R. v. Mayor of Liverpool* (1891), 7 T. L. R. 592).

No second application can be made for a prerogative writ after the first has been discharged (*R. v. Mayor of Bodmin*, [1892] 2 Q. B. 21).

An action of *mandamus* will lie when the promoters have served their notice to treat, even although no pecuniary damage has been caused by the delay, and it may or may not be joined with a claim for damages (*Fotherby v. Metropolitan Rail. Co.* (1866), L. R. 2 C. P. 188; *Guest v. Poole and Bournemouth Rail. Co.* (1870), L. R. 5 C. P. 553; *Morgan v. Metropolitan Rail. Co.* (1868), L. R. 4 C. P. 97).

Section 25 (8) of the Judicature Act, 1873, also enables the courts to grant a *mandamus* by an interlocutory order in an action in cases that appear just and convenient, but it will not be granted to compel a company to proceed to assess compensation unless it is shown that real injury will be occasioned by

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NOTE.

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the delay, and the matter will usually be postponed until the trial (*Widnes Alkali Co. v. Sheffield and Midland Rail. Co.'s Committee* (1877), 37 L. T. 131).

The *mandamus* provided by s. 25 (8) of the Judicature Act is confined to cases where an action will lie, *i.e.*, where a legal wrong has been done. It will not, therefore, be granted to compel a local board to perform a public duty. In such a case the prerogative writ would be the proper remedy (*Glossop v. Heston Local Board* (1879), 12 Ch. D. 102, 116, 122, and see *Baxter v. London County Council* (1890), 63 L. T. 767).

It is not a good answer to an action for *mandamus* that the capital has not been subscribed under s. 16 (*Guest v. Poole and Bournemouth Rail. Co.* (1870), L. R. 5 C. P. 553, and see notes to s. 16).

Before the court will issue a *mandamus* there must be something in the nature of a demand by the landowner and a refusal by the company. A neglect to issue a warrant after demand made upon the solicitors of the company is a sufficient refusal to entitle the claimants to a writ (*In re Senior* (1849), 18 L. J. Q. B. 333).

Disputes as to compensation where the amount claimed does not exceed £50 to be settled by two justices.

**22.** If no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices.

*Agreement.*—As to purchase of lands by agreement, see ss. 6—15.

*Parties.*—As to parties, see s. 7.

**“Injuriously affected.”**—This section, apart from any proviso in the special Act, gives a right to compensation for the injurious affection of land by the execution of the works when no other land has been taken, and the amount does not exceed £50. Section 68 gives it where the amount is above that sum (*R. v. St. Luke's* (1871), L. R. 6 Q. B. 572, p. 575; L. R. 7 Q. B. 148, p. 152). When land is taken, compensation is given for the injurious affection of land held therewith by s. 63.

**“Shall not exceed fifty pounds.”**—Justices have power under s. 121 to settle claims for a higher amount when possession of land is taken from a tenant having no greater interest than for a year or from year to year. (See notes to that section.) Although this section gives powers to justices to settle the amount of the value of the lands taken, and of the compensation to be paid for injuriously affecting, the two claims cannot be split up so as to lead to two proceedings (*Bexley Heath Rail. Co. v. North*, [1894] 2 Q. B. 579, at 585).

It is the amount claimed that determines the jurisdiction and not the amount to which the person is entitled (*Read v. Victoria Station and Pimlico Rail. Co.* (1863), 32 L. J. Ex. 167).

Although the amount claimed be under £50, the parties can agree to have the question settled by arbitration (*Collins v. South Staffordshire Rail. Co.* (1852), 21 L. J. Ex. 247).

**“The same shall be settled by two justices.”**—As to justices generally, see definition, s. 3 and note.

If the justices refuse to settle the amount, they can be compelled to do so by *mandamus* (*R. v. Kennedy*, [1893] 1 Q. B. 533; *R. v. Stone* (1866), L. R. 1 Q. B. 529; *R. v. Vaughan* (1868), L. R. 4 Q. B. 190). The proceeding must be by motion in the King's Bench Division for a prerogative writ, as

the action of *mandamus* will not lie against justices even with their consent (*Baxter v. London County Council* (1890), 63 L. T. (N.S.) 771, and see notes to s. 21).

What the justices are to determine under this section is the amount of the compensation, and it does not fall within their jurisdiction to decide the question of title. The words "the same" mean the compensation, not the title (*R. v. Edwards* (1884), 13 Q. B. D. 586, and see s. 23, note "The same shall be so settled.")

For procedure, see s. 24 and notes thereto.

For principles of compensation, see note to s. 63 when lands are taken, and to s. 68 when injuriously affected.

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**23.** If the compensation claimed or offered in any such case shall exceed fifty pounds (a), and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained (b), stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided (c).

Compensation exceeding £50 to be settled by arbitration or jury, at the option of the party claiming compensation.

(a) When the amount does not exceed £50, see ss. 22—24.

(b) These provisions are contained in ss. 39, 40.

(c) Sections 38—57.

**"If the party claiming," etc.**—It is the landowner who has the choice whether there shall be an arbitration or not. If he does not desire the amount assessed by arbitration, the question must be settled by a verdict of the jury (*Fitzhardinge v. Gloucester and Berkeley Canal Co.* (1872), L. R. 7 Q. B. 776, 781). He does not lose his right to have the value assessed because he has made no claim and because the company has proceeded under s. 85 (*R. v. Metropolitan Rail. Co.* (1865), 13 L. T. (N.S.) 444). He is not bound to make his claim for arbitration within twenty-one days of the service of the notice to treat, but he may delay up to the time when he receives the ten days' notice under s. 38 of the intention of the promoters to issue their warrant to summon a jury.

This section applies also to the settlement of the amount of compensation claimed under s. 68, *post*, in so far as it is not altered thereby (*Evans v. Lancashire and Yorkshire Rail. Co.* (1853), 1 E. & B. 754).

**"By notice in writing."**—As to service of such notice, see s. 134 and notes, *post*, and s. 138 of the Railways Clauses Consolidation Act, 1845, *post*.

The particulars as to the "nature of the interest" required are substantially the same as the particulars of the claim required under ss. 21, 68. See the cases collected in notes to s. 21, note "The particulars of his claim."

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## NOTE.

**"The amount of the compensation so claimed."**—The party who takes the initiative must state the amount he claims in the notice he gives. The landowner, therefore, who desires arbitration must do so in order that the promoters may have an opportunity of considering whether they will pay him the amount he claims without arbitration or offer him a smaller sum (*Fitzhardinge v. Gloucester and Berkeley Canal Co.* (1872), L. R. 7 Q. B. 776, 781).

**"The same shall be so settled."**—It is the amount of compensation that is to be settled and not the title to compensation. The question of title and the enforcement of the rights of parties is left to other tribunals. This is equally true of all assessments of the value of land under this Act, whether by justices, jury and sheriff, arbitrators, or surveyors.

As to justices, this was decided in *R. v. Edwards* (1884), 13 Q. B. D. 586.

As to jury and sheriff, see *R. v. London and North Western Rail. Co.* (1854), 3 E. & B. 443; *Chabot v. Morpeth* (1850), 15 Q. B. 446; *Ex parte Cooper* (1865), 34 L. J. Ch. 373; *Chapman v. Monmouthshire Rail. Co.* (1857), 2 H. & N. 267; *Walker v. London and Blackwall Rail. Co.* (1843), 7 Jur. 1154.

As to arbitrators, see *Re Newbold* (1863), 14 C. B. (n.s.) 405; *R. v. London and North Western Rail. Co.* (1854), 3 E. & B. 443; *Gould v. Staffordshire Potteries Waterworks Co.* (1850), 6 Rail. Cas. 568; *Rhodes v. Airedale Drainage Commissioners* (1876), 1 C. P. D. 402; *Brierley Hill Local Board v. Pearsall* (1884), 9 App. Cas. 595.

If the promoters, therefore, desire to contest the right of the claimant to compensation, they cannot do so until after the amount has been assessed (*Brierley Hill Local Board v. Pearsall*, *supra*, pp. 598, 601, and the cases just cited). The promoters cannot restrain the claimants from proceeding, even when they have no title, as the court will not grant an injunction to restrain persons from doing a mere fruitless act (*London and Blackwall Rail. Co. v. Cross* (1886), 31 Ch. D. 354; and see s. 25, note "Restraining arbitration," *post*, p. 55).

And even in a case under s. 41 of the Railways Regulation Act, 1868, *post*, where the compensation may be assessed by a judge and jury of the High Court the same principle applies. It is merely a determination as to the amount, and the only mode of enforcing the judgment would be to bring an action in the ordinary way in the High Court (*In Re East London Rail. Co. (Oliver's Claim)* (1890), 24 Q. B. D. 507; and see Lord ESHER, p. 511, on the law under the Lands Clauses Acts).

If, however, promoters enter on land without compensating a person having an interest therein, or otherwise proceeding under the Act in respect thereof, he has ground for an action, and the court has power in that action to make a declaration as to his interest in the property (*Birmingham Land Co. v. London and North Western Rail. Co.* (1888), 40 Ch. D. 268).

As the service of notice and reference to arbitration leaves the question of title open, the promoters are not thereby estopped from afterwards claiming the land as being their own property (*Campbell v. Mayor of Liverpool* (1870), 9 Eq. 579).

A proviso as to title in the notice to treat will not enable the company to revoke the reference to arbitration; the effect is to reserve the point for future decision (*Re Arbitration between Chilworth Gunpowder Co. and the Manchester Ship Canal Co.* (1891), 8 T. L. R. 79).

The compensation must be an amount in money and nothing else, and there is no power to grant or award any other relief. Thus, an arbitrator cannot direct or award that approaches and ways be constructed to land not taken, in lieu of communications formerly existing on the land taken (*In re Ware* (1854), 9 Ex. 395). Nor can he apportion rent where part only of leasehold premises is taken; a method being provided for that purpose in s. 119 (S. C.).

The verdict of a jury which awarded an additional sum in respect of the expense that would be incurred by the landowner in building a bridge between the severed portions of the land was held to be in excess of their jurisdiction (*R. v. South Wales Rail. Co.* (1849), 13 Q. B. D. 988). See "Jurisdiction of jury" in note to s. 50, *post*.

**"For three months," etc.**—By s. 31 of this Act (see *post*) the arbitrators, where two have been appointed and agree to act, are allowed 21 days after the last shall have been appointed in which to make their award; but they may enlarge that time, and according to this section it would appear that they can enlarge it to three months. As to the manner of enlargement, see s. 31. If they do not make their award within the extended time, s. 31 further provides that the matter shall be referred to an umpire to be previously appointed under s. 27. The umpire has a further period of three months from the date of the reference to him within which to make his award (*Skerratt v. North Staffordshire Rail. Co.* (1848), 17 L. J. Ch. 161). Where the arbitrators have failed to appoint an umpire, the same rule holds good. He has three months from the date when the duty devolves upon him (*Bradshaw's Arbitration* (1848), 17 L. J. Q. B. 362; *Holdsworth v. Wilson* (1863), 4 B. & S. 17). And if the date of his appointment is after the time when the arbitrators should have made their award, the three months is counted from the date of his appointment and not from the limit of the time within which the arbitrators should have made their award (*Re Arbitration between Pullen and the Corporation of Liverpool* (1882), 51 L. J. Q. B. 285).

Where two arbitrators are appointed and one refuses or neglects to act for seven days, the other may proceed *ex parte* under s. 50. That sole arbitrator would no doubt have three months in which to deliver his award, but there is no provision as to whether it is to be calculated from the date of his appointment or from the date of the appointment of the arbitrator who refuses to act, or, thirdly, from the end of the seven days. This last method would appear to carry out the principle laid down in the case of an umpire, namely, that he has three months from the date when the duty devolves upon him.

If the award is made after three months has elapsed it is invalid, if the time has not been otherwise enlarged (*Evans v. Lancashire and Yorkshire Rail. Co.* (1853), 1 E. & B. 754).

**Enlargement of time for making award.**—The time for making an award may be enlarged either—

I. *By consent of the parties.*—The provision in this section is a power given for the advantage of the parties enabling either party to obtain a settlement of the compensation by a jury in case of improper delay in the arbitration. This advantage they may renounce, as it was not intended to prevent an extension of the time if both parties consider it desirable (*Caledonian Rail. Co. v. Lockhart* (1860), 3 Macq. Cas. H. L. (Sc.) 808; *Re Palmer and Metropolitan Rail. Co.* (1862), 10 W. R. 714). Written consent for enlarging the time would not appear to be necessary if the conduct of the parties is such as to estop them from setting up the want of jurisdiction of the arbitrator (*Tyerman v. Smith* (1856), 6 E. & B. 719; *Bennett v. Watson* (1860), 29 L. J. Ex. 357; and see *Darnley v. London, Chatham, and Dover Rail. Co.* (1867), L. R. 2 H. L. 43).

II. *By order of a court or a judge.*—Section 9 of the Arbitration Act, 1889 (see *post*), enables a court or a judge from time to time to extend the time for making an award. This section re-enacts a provision of the Common Law Procedure Act, 1854, to similar effect. Under that Act it was held that the provisions therein contained for enlarging the time for making an award applied to references under the Lands Clauses Acts, but that after unreasonable delay the court will not exercise this jurisdiction so as to deprive the landowner of a trial by jury if he then prefers it (*In re Dare Valley Rail. Co.* (1869), L. R. 4 Ch. 554). The court may enlarge the time after the award has been made and so make it valid (*Lord v. Lee* (1868), L. R. 3 Q. B. 404; *Re Denton and Strong* (1874), L. R. 9 Q. B. 117; *Knowles & Son, Limited v. Bolton Corporation*, [1900] 2 Q. B. 253). And see note to s. 9 of the Arbitration Act, *post*.

**"By the verdict of a jury."**—If for any reason the arbitration proceedings prove a failure, the procedure is to have a jury summoned to assess the compensation. If the promoters neglect or refuse to do so, the court will grant a

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*mandamus* to compel them (*South Yorkshire Rail. Co., Ex parte Senior* (1849), 18 L. J. Q. B. 333; *Lind v. Isle of Wight Ferry Co.* (1862), 7 L. T. 416).

For procedure as to *mandamus*, see s. 21 note, "Compelling promoters to proceed," and Appendix.

Method of proceeding for settling disputes as to compensation by justices.

**24.** It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

**"Authorised to be settled by two justices."**—Questions of disputed compensation are authorised to be settled by two justices under ss. 22 and 121 of this Act (see s. 21, *ante*, p. 45).

They are also authorised to settle questions as to apportionment of rent under ss. 98, 116, 119.

**"To summon the other party."**—This summons is not issued upon either a complaint or an information, but upon an application to be made by either party, and in all proper cases the justices to whom it is made would be bound to issue the summons.

**"To hear and determine such question."**—"Such question" means the amount of disputed compensation, and the question of title to receive the compensation is left for the decision of other tribunals (*E. v. Edwards* (1884), 13 Q. B. D. 586; and see *Great Northern and City Rail. Co. v. Tillet*, [1902] 1 K. B. 874, a case under s. 121).

Under s. 308 of the Public Health Act, 1875, the amount of compensation, if under £20, may also be recovered before two justices.

The determination of the compensation is not an order, and the provisions of Jervis's Act (11 & 12 Vict. c. 43) as to orders have no application. The justices, therefore, have jurisdiction to hear and determine the question of disputed compensation, although the application be made more than six months after the land has been taken or injuriously affected, and they are not bound by s. 11 of Jervis's Act, which limits the time for making a complaint to six months from the time when the matter of such complaint arose (*S. C.*, which over-rules *Re Edmundson* (1851), 17 Q. B. 67, and approves *R. v. Hannay* (1874), 44 L. J. M. C. 27).

From the above decision, it follows that the determination of the amount not being an order, cannot be enforced by distress or otherwise as provided in the Summary Jurisdiction Acts (*S. C.*, pp. 592, 594, 596).

The determination not being an order, the justices are not bound to put their decision in writing, but may deliver it verbally (*R. v. Boyce Combe* (1863), 32 L. J. M. C. 67).

It is very doubtful if justices sitting to hear and determine under this section constitute a court of summary jurisdiction under s. 13 (11) of the Interpretation Act, 1889, which repeals and re-enacts ss. 50 and 7 respectively of the Summary Jurisdiction Acts, 1879 and 1884 (see *Boulter v. Kent JJ.*, [1897] A. C. 556, over-ruling *R. v. Glamorganshire JJ.*, [1892]

1 Q. B. 621). If they are not, then the method of procedure for summoning witnesses would appear to be that provided by s. 143 of the Lands Clauses Consolidation Act, 1845, *post*.

Even if justices sitting to determine compensation are a court of summary jurisdiction, only such of the sections of the Summary Jurisdiction Acts as deal generally with these courts would appear to be applicable. Of these the most important is s. 33 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), which provides that "any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the court to state a special case," and further, "if the court decline to state the case, may apply to the High Court of Justice for an order requiring a case to be stated." The application is to be made and the case stated according to the rules under that Act; the Rules of the Supreme Court and subject thereto, the provisions of 20 & 21 Vict. c. 43, so far as applicable, shall apply thereto. *Bealey Heath Rail. Co. v. North*, [1894] 2 Q. B. 579, was a case stated under this section, but that was prior to the decision of the House of Lords in *Boulter v. Kent J.J.*, *supra*, and it must be considered doubtful if justices can now state a case. As excess or want of jurisdiction can be raised by *certiorari* (see notes to s. 145, *post*), and as the determination only settles the amount and not the rights of the parties, the necessity of stating a case is not urgent. A case was, however, stated in *Great Northern and City Rail Co. v. Tillet*, [1902] 1 K. B. 874.

Before settling the amount of the costs justices should be prepared to hear evidence of the costs actually incurred.

"**And the costs.**"—Under a local Act which empowered justices to give full compensation, it was held, although nothing was said as to costs, that full compensation necessarily included the costs of applying to justices (*Mayor of Huddersfield v. Shaw* (1890), 54 J. P. 724).

In settling the amount of compensation regard must be had not only to the nature of the land taken but to the damage caused by severance and other injurious affection to the land held therewith (s. 63). For the principles in assessing the value of land, see notes thereto. For the principles in assessing the compensation for injuriously affecting land not held with land taken, see notes to s. 68.

**25.** When any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised or required to be settled by arbitration shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any two of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other,

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**NOTE.**

Appointment of arbitrators when questions are to be determined by arbitration.

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Sections 25—37 deal with the procedure for settling compensation by arbitration, with which must also be read the Arbitration Act, 1889, *post*.

**“Authorized or required to be settled by arbitration.”**—If the claim for the value of the lands taken and the damage for injuriously affecting lands held therewith, either alone or together exceed £50, s. 23 provides that it shall be settled by arbitration if the party claiming compensation so desire it, with the exception in the case of interests less than that of a yearly tenant (see s. 121).

Arbitrations are also authorised under s. 64 where the owner has been absent from the United Kingdom, and the value has been assessed by a surveyor in accordance with s. 58. The absent owner may have the amount submitted to arbitration.

Section 130 also authorises arbitration to settle the differences as to price, when any person is entitled to pre-emption in respect of superfluous lands and desires to purchase them. See s. 21, note, “Shall be settled in manner hereinafter provided.”

**Arbitration by agreement.**—It is open to the parties to agree to any question of compensation being referred to arbitration under this section, although, for example, the interest of the claimant be not greater than that of a tenant from year to year. In such cases there is no necessity for a perfect compliance with all the statutory forms. The notices required by the Act are only necessary when no option is exercised, and it is doubtful what the claimant may require. So also the appointment of the arbitrator on the part of the company if signed by their secretary is valid (*Collins v. South Staffordshire Rail. Co.* (1852), 21 L. J. Ex. 247).

Similarly, where the parties agree that they shall refer the amount of compensation to a person as sole arbitrator, which person is to be nominated by two others, it was held that this was not a reference under this statute, but a general reference under its provisions, and that the plaintiff was entitled to his costs, although nothing was said as to them in the submission (*Martin v. Leicester Waterworks Co.* (1858), 3 H. & N. 463).

A submission may by consent be made to embrace incidents and import powers not included in a reference proceeding simply on the statutory clauses. It may be based on the statute and on the common law, and derive efficacy from both, and it would appear that if it is intended to be conducted under the sanction of the Act, the statutable incidents, so far as applicable, will apply. Thus, the death of the landowner will not revoke the submission to arbitration (*Caledonian Rail. Co. v. Lockhart* (1860), 3 Macq. H. L. (Sc.) 806).

The provisions of the Arbitration Act, 1889, will be applicable in such cases in so far as they are not inconsistent with the agreement (s. 24).

**“Shall concur in the appointment of a single arbitrator.”**—It has been stated that this section appears to enact that an endeavour should first

be made by the parties to concur in choosing a single arbitrator, and that in the event of this failing a request should be made by the one to the other that the latter should nominate an arbitrator (*Yates v. Mayor of Blackburn* (1860), 29 L. J. Ex. 447, p. 451).

Where two arbitrators and an umpire have been appointed, the case is properly brought within s. 25, and the award will not be set aside because no attempt has been made to appoint a single arbitrator (*Eagle v. Charing Cross Rail Co.* (1867), 36 L. J. C. P. 297).

**"Each party . . . shall nominate and appoint an arbitrator."**—A nomination is not effective until notice has been given to the other party (*Tee v. Harris* (1847), 11 Q. B. 7).

The nomination or appointment must be delivered to the arbitrator, and notice thereof must be given to the other party. It is not enough that there should be a notice of intention to appoint, as the person stating such to be his intention would not be bound thereby (*Bradley v. London and North Western Rail. Co.* (1850), 5 Ex. 769).

*Objections to arbitrator nominated.*—KNIGHT BRUCE, V.-C., stated that the surveyor of a railway company who had, in that character, treated with a landowner and offered a price for land required by the company, ought not to have been selected as arbitrator in respect of the land. The landowner in this case protested, but subsequently appointed an arbitrator to act on his behalf, and the arbitration was proceeded with. It was held that the landowner by so proceeding could not object later. It would appear that he ought to have retired from the arbitration if he meant to make his objection effectual (*Elliot v. South Devon Rail. Co.* (1848), 2 De G. & S. 17).

In the same case objection was taken to the umpire on the ground that he was the surveyor of the Great Western Railway Company and a shareholder therein, the South Devon line being an extension of that line and to be worked with it, and the Great Western Railway Company were shareholders to a large amount in the South Devon Railway Company. The court, however, refused to set aside the award on this ground, but the Vice-Chancellor said that it was saved very narrowly (*S. C.*, p. 29).

Where a valuer has been called in by a railway company in other cases to value land on their behalf and to give evidence in these other cases, this, it would appear, might in certain cases be a good objection to his being appointed umpire; but it is an objection that may be waived, and if the landowner, after it comes to his knowledge before the award has been made, allows matters to proceed and does not take the objection till some time after the award is made, he must be taken to have waived the objection and the court will refuse to set aside the award (*Clout v. Metropolitan and District Rail. Co.* (1882), 46 L. T. 141).

In the case of *In re Haigh and the London and North Western Rail. Co. and Great Western Rail. Co.*, [1896] 1 Q. B. 649, a motion was made to set aside an award on the ground that the umpire was interested and had acted improperly in being retained, and in giving evidence for the railway companies in another case after his appointment as umpire. The motion was, however, dismissed, as it was held that bias was not shown.

*Restraining arbitration.*—The court has jurisdiction to restrain a party from proceeding to arbitration, and will do so if it is satisfied that injury will result to the party complaining if the arbitration is allowed to proceed, but it will not exercise its jurisdiction when it sees the result will be merely futile (*Farrer v. Cooper* (1890), 44 Ch. D. 323; see *Wood v. Lillies* (1892), 61 L. J. Ch. 156).

But it has no jurisdiction to restrain a party from proceeding with an arbitration in a matter beyond the agreement to refer, although such arbitration may be futile and vexatious, on the ground that no court can issue an injunction in a case where, if the thing went on, there would be no legal injury (*North London Rail. Co. v. Great Northern Rail. Co.* (1883), 11 Q. B. D. 30).

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On the same grounds, if a person falsely assume the authority of another and serve a notice on a railway company on behalf of himself and that other, the court has no jurisdiction to interfere to restrain him from proceeding to arbitration under the notice (*London and Blackwall Rail. Co. v. Cross* (1886), 31 Ch. D. 354).

The court has jurisdiction to restrain an arbitration if an arbitrator is guilty of corruption (*Malmesbury Rail. Co. v. Budd* (1876), 2 Ch. D. 113); or if he is unfit or incompetent to act by reason of personal misconduct (*Beddow v. Beddow* (1878), 9 Ch. D. 89). See Arbitration Act, 1889, s. 11 and note, *post*.

The company, by appointing an arbitrator under protest under this section, does not thereby admit that the claimant is entitled to compensation, and that being so the court will not grant an injunction to restrain the proceeding to arbitration (*Sutton Harbour Improvement Co. v. Hitchens* (1851), 1 De G. M. & G. 161).

**"A submission to arbitration."**—After some conflict of decision, it was clearly settled that the appointment of an arbitrator under this section was a submission to arbitration on the part of the party making the same, and the arbitration being therefore an arbitration by consent, it came within the provisions of the Common Law Procedure Act, 1854, as to arbitrations by consent. Therefore, under that Act the arbitrator had power to state a case for the opinion of the court (*Rhodes v. Airedale Drainage Commissioners* (1876), 1 C. P. D. 402; *Bidder v. North Staffordshire Rail. Co.* (1878), 4 Q. B. D. 412); or to extend the time for making the award (*Re Dare Valley Rail. Co.* (1869), 4 Ch. D. 554); and the submission might be made a rule of court (*Ex parte Harper* (1874), 18 Eq. 539; and see *In re Harper* (1875), 20 Eq. 39).

Sections 3—17 of the Common Law Procedure Act, 1854, which dealt with arbitrations, have, however, been repealed by s. 26 of the Arbitration Act, 1889, and s. 24 of this later Act makes that Act apply to all arbitrations except in so far as it is inconsistent with the Act regulating the arbitration. The Act of 1889 practically re-enacts the provisions of the Common Law Procedure Act, 1854, so that, assuming the same decisions to apply, the time for making the award may be extended by a court or a judge under s. 9, and a special case may be stated under s. 19, or the award may be stated in the form of a special case under s. 7 (b). See the Arbitration Act, 1889, *post*, and cases cited in the notes therein.

The submission has now the effect of a rule of court. Section 1.

**Revocation of submission.**—Section 1 of the Arbitration Act, 1889, *post*, provides that submissions shall be irrevocable, except by leave of a court or a judge; and it would appear that the court or a judge has power under this section of the Lands Clauses Act and the Arbitration Act, to revoke a submission (*In re Lord Gerard and London and North Western Rail. Co.*, [1895] 1 Q. B. 459).

Submissions under agreements by which the arbitration is to be carried out pursuant to the Lands Clauses Acts would come under this rule. The court has jurisdiction to revoke a submission if the arbitrator is going wrong in a point of law, and will exercise it unless the parties agree to the arbitrator raising the questions in a special case (*East and West India Dock Co. v. Kirk and Randall* (1887), 12 App. Cas. 738; *Tabernacle Permanent Building Society v. Knight*, [1892] A. C. 298, p. 301).

The court has also revoked a submission where the arbitrator after his appointment has entered into litigation with one of the parties (*Re Baring Brothers & Co. and Doulton & Co.* (1892), 61 L. J. Q. B. 704; and see *Belcher v. Roedean School* (1901), 85 L. T. 468).

The court refused to revoke a submission where the notice to treat contained a qualification as to the interest of the parties, and the arbitrators were proceeding to deal with the question as if there was no such qualification (*Re Chilworth Gunpowder Co.* (1891), 7 T. L. R. 79).

**"May appoint such arbitrator to act on behalf of both parties."**—An appointment by the claimant of an arbitrator to act for both parties

is not valid unless he has previously appointed an arbitrator on his behalf and notified the same to the company.

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A claimant requested a company to appoint an arbitrator on their behalf, stating that it was his intention to appoint a certain person as arbitrator, and that if for the space of fourteen days after that notice the company failed to appoint an arbitrator on their behalf he would appoint that person to act for both. The company having refused to refer the matter to arbitration, the claimant after the fourteen days served them with a notice stating that he had appointed that person as his arbitrator, and that he then appointed him to act for both. The arbitrator made an award, but the court refused on motion either to enforce it or to set it aside on the ground that the arbitrator had not been validly appointed (*Bradley v. London and North Western Rail. Co.* (1850), 5 Ex. 769).

**26.** If before the matters so referred (a) shall be determined any arbitrator appointed by either party die, or become incapable (b), the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed ex parte; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

Vacancy of arbitrator to be supplied.

(a) Section 25.

(b) If he refuse or neglect, see s. 29, and also s. 6 of the Arbitration Act, 1880, *post*.

**"Shall have the same powers."**—The arbitrators under s. 31 have 21 days from the day on which the last shall have been appointed within which to make their award. They may, however, extend the time to three months under s. 23, which period is probably to be calculated in a case under this section from the date of the appointment of the new arbitrator (see note to s. 23).

**27.** Where more than one arbitrator shall have been appointed (a) such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special Act; and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Appointment of umpire.

(a) As to appointment, see s. 25.

**"Before they enter upon the matters referred."**—Although under s. 31 the award of the arbitrators if the time is not enlarged must be given

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within 21 days, this incapacity to make an award has no effect upon the power given to the arbitrators under this section, nor to the Board of Trade under s. 28 to appoint an umpire, nor to appoint a new umpire in case of the death or failure of the first. They may appoint him within three months, the time limited by s. 23 (*Bradshaw's Arbitration* (1848), 12 Q. B. D. 562, 575; *Holdsworth v. Wilson* (1863), 32 L. J. Q. B. 289).

If arbitrators have been appointed under s. 25, and one arbitrator refuses or neglects after seven days to concur in the appointment of an umpire, the other arbitrator has power under s. 30 of this Act to proceed, *ex parte*, to make an award, and the previous appointment of an umpire is not in such a case a condition precedent to the *ex parte* proceedings (*Shepherd v. Corporation of Norwich* (1885), 30 Ch. D. 553).

See s. 28 as to applying to the Board of Trade in cases where the arbitrators refuse or neglect to appoint an umpire.

**"Nominate and appoint an umpire."**—The appointment must be a matter of choice and not of chance. It must not be made by drawing lots (*In re Cassell* (1829), 9 B. & C. 624; *Pescod v. Pescod*, W. N. (1888), 2).

If, however, they each choose an umpire whom the other considers a proper person and draw lots as to which of the two is to be chosen, this will be valid (*Neale v. Ledger* (1812), 16 East, 51; *In re Hopper* (1867), L. R. 2 Q. B. 367).

As to who may be appointed, see s. 25, note, "Objection to arbitrator nominated."

**"On which they shall differ."**—It is a general rule that where arbitrators agree on some points, but differ as to others, when the case is referred to the umpire, he must award on all, as if the arbitrators had disagreed on all, and an award in which both arbitrators and umpire joined, in which it was stated that the arbitrators decided certain points, but did not agree on one, which was referred to the umpire who decided it, was held to be bad (*Tollitt v. Saunders* (1821), 9 Price, 612, following principle in Roll. Ab. Arb. (P.) 7, 262).

But this rule does not apply if the contrary is expressed in the submission (*S. C.*, p. 619).

When the arbitrators differ, they usually give notice thereof to the arbitrator in writing. See the proviso, Sched. I. (d) of the Arbitration Act, 1889, and s. 2.

**"Or which shall be referred to him."**—By s. 31 it is provided that if the arbitrators, if two are appointed and act, do not give their award within 21 days, or within the extended time (if any), the matters referred to them shall be determined by the umpire.

When an umpire had sat for one day with the two arbitrators, and on the second day one of the arbitrators did not attend, and no notice was given that the other arbitrator would proceed *ex parte* under s. 30, but the one arbitrator and the umpire sat together and examined a witness, the party who had appointed the absent arbitrator having protested and withdrawn without calling his witnesses, and nothing more being done until after the time had expired, within which the arbitrators should award, when the umpire without giving notice, or hearing the witnesses of the absent party, gave his award, it was held that the award was bad and it was set aside (*Hawley and the North Staffordshire Rail. Co.* (1848), 2 De G. & S. 33).

The non-attendance of the arbitrator did not, in the absence of collusion or fraud, estop the person who had appointed him, and he was not bound by what passed at the meeting in the absence of the arbitrator (*S. C.* (1848), 2 De G. & S., p. 45).

**"If such umpire shall die," etc.**—If on the death of an umpire the parties agree to refer the question to one arbitrator, that will be deemed a continuation of the original arbitration, and s. 34 as to costs will apply accordingly (*R. v. Manley-Smith* (1893), 63 L. J. Q. B. 171).

There is no provision as to what is to happen in the event of the umpire refusing or neglecting to act, in which case probably s. 5 of the Arbitration Act, 1889, would apply (see *post*).

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**NOTE.**

**28.** If in either of the cases (a) aforesaid the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade, [*in any case in which a railway company shall be one party to the arbitration, and two justices in any other case,*] shall, on the application of either party to such arbitration, appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

Board of Trade empowered to appoint an umpire on neglect of the arbitrators, in case of railway companies.

(a) These are the cases mentioned in s. 27.

The words in italics have been repealed by the Lands Clauses (Umpire) Act, 1883 (46 Vict. c. 15), *post*.

This section is not applicable where one of the two arbitrators refuses to appoint an umpire or otherwise neglects to act. The one arbitrator can then proceed *ex parte* under s. 30, in which case an umpire is unnecessary (*Shepherd v. Corporation of Norwich* (1885), 30 Ch. D. 553).

**The Board of Trade shall appoint.**—The Board of Trade may appoint an umpire, although the time for making the award by the arbitrators has elapsed; and the same rule applies either to the first appointment, or in case of death to the appointment of a new umpire (*Re Bradshaw's Arbitration* (1848), 12 Q. B. 562, 575).

The Board of Trade Arbitrations, etc. Act, 1874 (37 & 38 Vict. c. 40), s. 6, which allows the Board of Trade to appoint the Railway Commissioners to be umpire, does not apply to this section, as the appointments under the Lands Clauses Acts are specially exempted.

It may be noted that by 9 & 10 Vict. c. 105, ss. 2, 9, the powers of the Board of Trade in respect of railways were transferred to the Railway Commissioners. The Act was, however, repealed by 14 & 15 Vict. c. 64, and the powers re-transferred to the Board of Trade. By s. 3 of that Act it is provided that where the Board of Trade are authorised by any Act relating to railways to make any appointment, they may signify such appointment "by a written or printed document signed by one of the joint secretaries, or by some assistant secretary or other officer appointed by them to sign documents relating to railways." Such document is to be received in evidence without proof of signature or authority.

**29.** If when a single arbitrator shall have been appointed such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special Act, in the same manner as if such arbitrator had not been appointed.

In case of death of single arbitrator the matter to begin de novo.

The procedure will, in the event of the death or incapability of the arbitrator, be according to s. 25.

The statute contemplates three cases where a single arbitrator is to award: (1) where a single one is originally appointed under s. 25; (2) where a vacancy is left unsupplied under s. 26; and (3) where one of the two refuses

**Section 29.** or neglects to act under s. 30 (*Bradshaw's Arbitration* (1848), 17 L. J. Q. B. 362, 366). This section seems to refer only to the case where a single arbitrator has been appointed; it is apparently doubtful whether it would apply to the second and third of these cases. Possibly s. 5 of the Arbitration Act, 1889, might in such a case be applicable.

**NOTE.**

If either arbitrator refuse to act the other to proceed *ex parte*.

**30.** If where more than one arbitrator shall have been appointed (a) either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

(a) Section 25.

**"Refuse."**—If one of the arbitrators absents himself this is not a refusal within this section, nor, apparently, is it a refusal if he expresses a wish that they should proceed without him (*Hawley v. North Staffordshire Rail. Co.* (1848), 2 De G. & S. 33).

The refusal to act may take place immediately the arbitrators are appointed and no other step taken; they need not have entered upon the matters referred to them; it may take place either before or after an umpire is appointed. If one arbitrator refuse before the umpire is appointed the other may proceed *ex parte*, and as no umpire would be required to settle differences between them no steps need be taken to have one appointed (*Shepherd v. Corporation of Norwich* (1885), 30 Ch. D. 553).

In a case where a private Act provided that if the arbitrator should "neglect or refuse to act" another might be appointed, it was held that the word "neglect" imported no degree of blame, but that merely allowing the time to elapse was sufficient (*Willoughby v. Willoughby* (1847), 9 Q. B. 923).

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

**31.** If where more than one arbitrator shall have been appointed (a), and where neither of them shall refuse or neglect to act as aforesaid (b), such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid (c).

(a) That is, under s. 25.

(b) That is provided for in s. 30.

(c) As to appointment of umpire, see ss. 27, 28.

**"Such extended time."**—The arbitrators can extend the time for three months, under s. 23, or longer if the parties consent, and the umpire has a period of three months from the date when the duty devolves upon him. See cases collected in the note to s. 23, "Enlargement of time for making award," p. 51.

If the arbitrators fail to make their award within the time, this section does not render the submission void, and the other powers incidental thereto, such as the appointment of an umpire, may be exercised (*Re Bradshaw's Arbitration* (1848), 12 Q. B. 562).

If the arbitrators disagree the matters may be referred to the umpire by notice in writing under s. 2, Schedule I. (d), of the Arbitration Act, 1889, *post*.

**32.** The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose. **Sect. 32.**  
 Power of arbitrators to call for books, etc.

See similar proviso, Arbitration Act, 1889, s. 7 (a), and see Schedule I. (f), and s. 2.

**"May call for the production of any documents."**—By s. 8 of the Arbitration Act, 1889 (see *post*), any party may sue out a writ of subpoena *duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action. And see s. 18 of that Act, *post*, as to compelling the attendance of witnesses anywhere within the United Kingdom.

**Attendance of witnesses.**—By s. 8, *post*, of the Arbitration Act any party to a submission may also sue out a writ of subpoena *ad testificandum*.

By s. 18 of the same Act, *post*, the court or a judge may order that writs of subpoena—*ad testificandum* or *duces tecum*—shall issue to compel the attendance before an arbitrator or umpire of a witness wherever he may be within the United Kingdom, and may also order that a writ of *habeas corpus ad testificandum* may issue to bring up a prisoner for examination before any arbitrator or umpire.

Writs of subpoena issue as of course, under s. 8. They issue at the Writ Department, Central Office. For practice, see notes to Arbitration Act, 1889, *post*, ss. 8, 18.

**"May examine the parties or their witnesses on oath."**—Arbitrators are bound where they are not expressly absolved from doing so to observe in their proceedings the ordinary rules which are laid down for the administration of justice, and the court when called upon to review their proceedings is bound to see that those rules have been observed (*Haigh v. Haigh* (1862), 31 L. J. Ch. 420).

It is not absolutely necessary to take the evidence upon oath, but it is the ordinary practice, and if taken otherwise, both parties must waive its being taken upon oath (*Wakefield v. Llanelly Railway and Dock Co.* (1864), 34 Beav. 245). See also provision (f) in the provisions to be implied in submissions unless a contrary intention is expressed in Schedule I, and s. 2 of the Arbitration Act, 1889, *post*. Section 22 of the Arbitration Act, 1889, provides that any person giving false evidence before an arbitrator or umpire shall be guilty of perjury.

It appears that an arbitrator may consult men of science in every department where it becomes necessary (*Caledonian Rail. Co. v. Lockhart* (1860), 3 Macq. H. L. (Sc.) 808, p. 823), and if not restricted by the terms of submission he may call in a valuer to assist him, provided he does not delegate his authority to such valuer (*S. C.*, and also *Anderson v. Wallace* (1835), 3 Cl. & F. 26).

He may also consult a lawyer, but it is very improper to call in the attorney of one of the parties to assist him in framing the award, although he may be the arbitrator's usual attorney (*Underwood v. Bedford Rail. Co.* (1861), 11 C. B. (N.S.) 442).

**Form of oath.**—See form in Appendix. If the witness desire it the oath may be administered in the Scotch form (Oaths Act, 1888 (51 & 52 Vict. c. 46), s. 5). See form in Appendix.

**Affirmation.**—If the witness object to be sworn and state as the ground of his objection, either that he has no religious belief or that taking an oath is contrary to his religious belief, he shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is or shall be required by law. The affirmation is to be of the same effect as an

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oath, and any person giving false evidence upon affirmation may be prosecuted for perjury (Oaths Act, 1888 (51 & 52 Vict. c. 46), s. 1). See form in Appendix.

If an oath has been duly administered and taken, its validity is not affected by reason of the absence of religious belief in the party taking it (*ibid.*, s. 3).

The arbitrator before allowing any person to affirm must learn from him if the ground of his objection is either of the two above mentioned. If his objection arises from any other cause the witness must be sworn.

*Tendering evidence*—The arbitrator must give the parties opportunity of being heard and of tendering evidence, and if he do not do so the award will be set aside (*In re Hawley and North Staffordshire Rail. Co.* (1848), 2 De G. & S. 33; *S. C.* affirmed on appeal (1848), 5 Rail. Cas. 383).

But where an arbitrator has made an appointment and one of the parties, although under the mistaken belief that there will be notice of another meeting before an award is made, goes away without tendering evidence, or giving notice that he meant to offer any evidence, the arbitrator may proceed *ex parte*, and without further notice make an award. A rule to set aside the award could only be granted on the terms of paying all the costs of the reference and of the rule (*Tryer v. Shaw* (1858), 27 L. J. Ex. 320).

A rule was granted on the same terms where one party refused to attend on the ground of not having the evidence ready, but without giving any reason for the delay (*In re Hewitt and Portsmouth Waterworks Co.* (1862), 10 W. R. 780).

The arbitrator has power to postpone the hearing if one party has been taken by surprise and has not his evidence ready, but if no application is made to him to do so the award will not afterwards be set aside on the ground of such surprise (*Solomon v. Solomon* (1859), 28 L. J. Ex. 129).

Arbitrator  
or umpire  
to make a  
declaration.

**33.** Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence of a justice make and subscribe the following declaration; that is to say,

“I, A. B., do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Act [*naming the special Act*]. A.B.

“Made and subscribed in the presence of \_\_\_\_\_.”

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

“**Before any arbitrator or umpire shall enter,**” etc.—If there is any delay on the part of arbitrators or umpire making the declaration, it is not material, provided that it is made before they enter upon the consideration of any matters referred to them (*Bradshaw's Arbitration* (1848), 12 Q. B. 563).

As the arbitration clauses are made for the protection of the parties, they can be waived by the parties consenting to do so (*Palmer v. Metropolitan Rail. Co.* (1862), 31 L. J. Q. B. 259).

If a party wishes to set aside an award on the ground that no declaration has been made, he must show very clearly that he did not know that no declaration had been made. Thus, in a case where the submission contained other matters than the question of compensation, and was, therefore, not clearly under the Lands Clauses Act, and the affidavits did not clearly show that the party applying was ignorant that the declaration under this section

had not been made, the court refused to grant a rule (*Re Levick and The Epsom and Leatherhead Rail. Co.* (1859), 1 L. T. (N.S.) 60).

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"*In the presence of a justice.*"—The declaration under this section may be made before a justice of any county, and need not be made before the justice of the peace of the county within which the dispute arose (*Davies v. South Staffordshire Rail. Co.* (1851), 21 L. J. M. C. 52).

"*Under the provisions of the Act.*"—As to what they must have regard to, see s. 49, and as to principles of compensation, see notes to ss. 63, 68.

**34.** All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.

Costs of arbitration, how to be borne.

"**All the costs of any such arbitration.**"—The words "such arbitration" refer to any arbitration which may fall within the description in s. 25. To use the words of that section, the provisions that follow that section are to take effect "when any question of disputed compensation by this or the special Act or any Act incorporated therewith, authorised or required to be settled by arbitration, shall have arisen" (*Metropolitan District Rail. Co. v. Sharpe* (1880), 5 App. Cas. 425).

In that case the special Act incorporated the Lands Clauses Act except where expressly varied. The special Act contained provisions as to how the arbitration should be conducted, but none as to costs. The arbitrator awarded compensation, but said nothing as to costs. It was held that the claimant was entitled to costs as the special Act did not repeal the provision as to costs in the general statute.

The costs of arbitrations under s. 68 are also governed by this section (*S. C.*, and see *Richardson v. South Eastern Rail. Co.* (1851), 20 L. J. C. P. 236).

The same principle was applied where an agreement was made to take lands before the special Act was obtained, the parties during the arbitration having treated it as an arbitration under the Lands Clauses Acts (*Catling v. Great Northern Rail. Co.* (1869), 21 L. T. (N.S.) 17).

In a case where the parties referred a claim for compensation to arbitration under agreement and not under this Act, and neither the award nor the deed of reference made any provision as to costs, it was held that the claimant was not entitled to receive costs (*Ex parte Reynal* (1847), 5 Rail. Cas. 60).

Where the submission is silent as to costs under an agreement outside the Lands Clauses Acts, the costs would now be in the direction of the arbitrator (Arbitration Act, 1889, s. 2, Sched. I. (i)).

As to costs in arbitrations under the Public Health Act, see s. 180 of that Act, *post*.

"*And incident thereto.*"—These do not include the costs of preliminary negotiations, and landowners should expressly provide for these costs. See also s. 52, and notes.

Surveyor's charges are usually based on Ryde's scale, but there is no recognised custom in regard to it (see *Debenham v. King's College, Cambridge* (1884), 1 C. & E. 438), and taxing masters do not consider themselves in any way bound by it. Taxing masters usually adopt a method of taxation less liberal than solicitor and client costs, but more liberal than between party and party (see *per SMITH, L.J.*, in *Malvern Urban District Council v. Malvern Link Gas Co.* (1900), 83 L. T. 326). There is, unfortunately, no appeal from a taxing master under the Lands Clauses Acts. See notes to s. 2 of the Lands Clauses (Taxation of Costs) Act, 1895.

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This would include the costs of the award. *Cf. In re Walker & Son and Brown* (1882), 9 Q. B. D. 434. See s. 35, note "The arbitrator shall deliver."

The costs of stating a special case for the opinion of the court during the progress of the arbitration under s. 19 of the Arbitration Act, 1889, are also included as being incident to the arbitration, and the court has no jurisdiction over them (*In re Knight and Tabernacle Permanent Building Society*, [1892] 2 Q. B. 613), but if the award is stated in the form of a special case under s. 7 of the Arbitration Act, 1889, then under s. 20 of that Act, the court has power over the costs (*In re Gonty and Manchester, Sheffield and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439). The decision to the contrary in *In re Holliday and Mayor of Wakefield* (1888), 20 Q. B. D. 699, 720, is no longer law since the passing of the Arbitration Act, 1889. See notes to that Act, *post*. As to costs occasioned by death of umpire, see *R. v. Manley-Smith* (1893), 63 L. J. Q. B. 171. In an Irish case where an abortive arbitration had been held under a wrong Act, the arbitrator proposed to include this in the costs of the arbitration under the Lands Clauses Act, but this was disallowed (*In re Kilnorth Rifle Range*, [1899] 2 I. R. 305).

**"To be settled by the arbitrators."**—This section must be read together with the Lands Clauses (Taxation of Costs) Act, 1895, *post*, which repealed and in effect re-enacted s. 1 of the Lands Clauses Consolidation Act, 1869, s. 1 of which provides that the costs of and incidental to the arbitration and award or the inquiry before a jury shall, if either party so requires, be taxed and settled as between the parties by any one of the masters of the Supreme Court.

In the case of an inquiry before a jury, see also s. 52 of the Lands Clauses Consolidation Act, 1845, *post*.

Arbitrations under agreements including matters not comprised in the Lands Clauses Acts are outside s. 1 of the Lands Clauses (Taxation of Costs) Act, 1895 (*Doulton v. Metropolitan District Board of Works* (1870), L. R. 5 Q. B. 333).

Agreements may be made excluding the Lands Clauses Consolidation Act, 1869, in which case the costs may be taxed under the Attorneys and Solicitors Acts (*Wombwell v. Corporation of Barnsley* (1877), 36 L. T. (N.S.) 708).

In such cases, Schedule I. (i) of the Arbitration Act, 1889, *post*, would probably apply unless inconsistent with the agreement. See s. 2 of that Act. The arbitrator would then have power to settle the costs.

See the cases as to taxation collected under s. 1 of the Lands Clauses (Taxation of Costs) Act, 1895.

Prior to the Lands Clauses Consolidation Act, 1869, questions arose as to whether the arbitrators or umpire should settle the costs in their award or in a subsequent instrument. In *London and North Western Rail. Co. v. Quick* (1849), 5 Rail. Cas. 520, it was held that the umpire ought to ascertain whether the claimant's right to costs arises, and, if so, include them in his award, and that he had no power to grant a subsequent certificate for them. This was, however, overruled in *Gould v. Staffordshire Potteries Waterworks Co.* (1850), 5 Ex. Rep. 214, where it was laid down that the amount of compensation should be awarded in the first instance, and that after it had been decided the question of costs would subsequently arise and the assessment be made by a subsequent document. The same case also decided that the words, "the arbitrators" included "the umpire," and that in the event of his making the award, he would be the proper person to assess the costs, and, further, that the adjudication of the costs need not be made within three months from the date of the reference.

It may be noticed that in arbitrations where Schedule I. (i) of the Arbitration Act, 1889, would apply, the amount of costs to be paid must be stated in the award itself, or otherwise the costs are liable to taxation in the usual course (*In re Prebble and Robinson*, [1892] 2 Q. B. 602).

The arbitrator in such a case is liable to have his own costs taxed (S. C.),

but if he settle the amount of his costs in the award they cannot be taxed (*In re Stephens and Liverpool and Globe Insurance Co.* (1892), 36 Sol. J. 464).

If an umpire under the Lands Clauses Acts direct the promoters to pay the costs including the costs of the solicitors employed by him in preparing the award, the promoters are entitled to have the costs of their solicitors taxed under s. 38 of the Solicitors Act, 1843, but the order should be to tax it in the Chancery Division (*In re Collyer, Bristow & Co.*, [1901] 2 K. B. 839).

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NOTE.

**"The same or a less sum than shall have been offered."**—There is no provision in the Act requiring the promoters to offer any sum, but if they do not offer any sum, then under this section they must pay the costs (*Martin v. Leicester Waterworks Co.* (1858), 3 H. & N. 463).

Where the landowner claimed in respect of two distinct matters, namely, for the land taken and for injuriously affecting other land, and the umpire awarded in the case of the land taken more than the company offered in respect of that matter, and in the other case awarded nothing, the company having offered nothing, and the landowner having suffered no damage, it was held that he was only entitled to such costs of the arbitration as were incident to that part of his claim in respect of which compensation had been awarded (*R. v. Biram* (1852), 17 Q. B. 969).

In making an offer for compensation the offer should not be a lump sum for compensation and costs. The offer must simply be of a sum for compensation, and must be plain and unconditional. Thus, in a claim for compensation for injuriously affecting land, where the offer was £100 in full satisfaction for all injury and for all costs and charges, and the jury found the amount of the injury to be £75, the offer was held to be bad, and the claimant entitled to his costs under s. 51 (*Balls v. Metropolitan Board of Works* (1866), L. R. 1 Q. B. 337; *cf.*, however, *Yates v. Mayor of Blackburn* (1860), 29 L. J. Ex. 447, where such an offer was made, and the claimant disallowed his costs; the point does not appear, however, to have been taken).

But where the claim for injuriously affecting has been divided into two parts, namely, for loss of business and structural damage, and the offer of the company has been £50 for loss of business, and £100 for structural damage, and the verdict of a jury was £100 for loss of business, and £50 for structural damages, the court held that the total sum offered was to be regarded, and that the jury ought only to have found the aggregate, and that the claimant was not entitled to his costs under the similar provision in s. 51 (*Hayward v. Metropolitan Rail. Co.* (1864), 4 B. & S. 787).

The offer must be in respect of the same subject matter as that upon which the award is made; thus, if a claim is made for land taken and for injurious affection of other land by cutting off its drainage, and if at the hearing before the arbitrator the company agree to allow the landowner to drain through the land taken, so that this item of claim is dropped, then the company will be bound to pay the costs whatever the amount of the award as it will be made in respect of different matters than those for which the offer was made (*Miles v. Great Western Rail. Co.*, [1896] 2 Q. B. 432).

See also note to s. 51. As to costs where the compensation has been paid into the bank, see s. 80.

In a claim under s. 68, where one head of claim was good and another bad, it was held that the claimant was not entitled to recover the costs incurred in the arbitration in connection with that head of claim which had failed (*Sharpe v. Metropolitan District Rail. Co.* (1879), 4 Q. B. D. 645, 652).

**Time for making the offer.**—There is no time fixed by the statute as to the time when the offer is to be made, but the question was discussed fully in *Fitzhardinge v. Gloucester and Berkeley Canal Co.* (1872), L. R. 7 Q. B. 776. In that case the final offer was made by the promoters after the claimant had requested that the matter should be referred to arbitration under s. 23, and at the time when the promoters in pursuance thereof completed the appointment of their arbitrator by giving notice of his appointment to the claimant. The court held that this offer was made in time, and the grounds of their decision appear to be that it was made before the claimant could have incurred

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any costs, and that the words "shall have been offered" mean offered at or before the commencement of the arbitration, and that the arbitration commences at the very time that notice is given of the appointment of an arbitrator.

In the case of *Yates v. Mayor of Blackburn* (1860), 29 L. J. Ex. 447, which arose under s. 68, the claimant, at the end of the twenty-one days therein allowed to the promoters to agree to pay the amount claimed, appointed an arbitrator, and gave notice thereof to the promoters, who then made an offer. This offer was held to have been in time, for although the claimant had incurred costs, yet he had not followed the steps laid down in s. 25, and it did not appear that he had delivered the appointment to the arbitrator.

The principles laid down in *Fitzhardinge's Case* were followed in *Gray v. North Eastern Rail. Co.* (1876), 1 Q. B. D. 696. The offer there was made after the arbitrators and umpire had been appointed. This was held to be too late, the time mentioned in *Fitzhardinge's Case* being regarded as the limit, and it was laid down that it did not matter after the arbitration had once begun whether costs have or have not been incurred, and whether they are large or small.

If the offer is made in the notice of intention to summon a jury given under s. 38 and the claimant afterwards requires arbitration by virtue of s. 23, the offer still holds good, and if a less sum is awarded the claimant cannot recover his costs (*Luscelles v. Swansea School Board* (1899), 69 L. J. Q. B. 24).

The above-cited cases have also decided clearly that if the company have made an offer they may withdraw it and make another, up to the time when the arbitration begins, without losing the benefit of this section. They may also withdraw the offer after the arbitration may be said to have commenced, and if they do, then if the withdrawal is accepted the promoters will be bound to pay the costs (*Foster v. Mayor, etc. of Sheffield* (1895), 72 L. T. 549). In that case the offer was made by the clerk of the council on instructions given by a sub-committee and withdrawn on the same instructions, but was afterwards ratified by the council. The court doubted whether the offer was a valid one.

*Recovery of the costs.*—The costs may be recovered by action, when the claimant is entitled to them, and the action can be maintained although the amount has not been previously settled or ascertained by taxation (*Metropolitan District Rail. Co. v. Sharpe* (1880), 5 App. Cas. 425, approving *Holdsworth v. Wilson* (1863), 4 B. & S. 1; see also *Martin v. Leicester Waterworks Co.* (1858), 27 L. J. Ex. 432; *Collins v. South Staffordshire Rail. Co.* (1861), 7 Ex. 5).

In the case where the costs have not been taxed, it was held that an action would lie on the ground that the right to recover them is given by the statute, and that settlement or taxation is merely a mode of determining in a quasi-judicial manner by a ministerial officer of the court disputed questions of amount when they arise. The judge in giving judgment may, therefore, make an order for the taxation (*Metropolitan District Rail. Co. v. Sharpe, supra*).

In a case where land is taken the claimant is entitled to bring an action for his costs within a reasonable time, and it is no defence to such an action that he may not be able to make out a good title to the land. It is not a condition precedent that he should have executed the conveyance. A *bona fide* claimant is by this section entitled to the costs of the arbitration, and when he gets them he is entitled to keep them, whether his title to the land turns out good or bad (*Capell v. Great Western Rail. Co.* (1883), 11 Q. B. D. 345).

In cases under s. 68, where the claimant takes the initiative, it may be that if he fails to establish his title to the lands, he should not have the costs of the inquiry as to the compensation (*Todd v. Metropolitan District Rail. Co.* (1871), 24 L. T. 435, and see this case discussed in *Capell v. Great Western Rail. Co., supra*).

The costs cannot be enforced by means of a proceeding to have it declared that the landowner has a lien. The vendor has no lien for the costs (*Ferrers v. Staffordshire and Uttoxeter Rail. Co.* (1872), 13 Eq. 524).

They may, perhaps, also be enforced by *mandamus*, and rules *nisi* have been

granted to enforce them ; but the rule will not be made absolute if there is any reasonable doubt or question, the courts having considered that it is more suitable that the matters should be discussed in an action (*In re London and North Western Rail. Co. and Quick* (1849), 5 Rail. Cas. 520, referred to in *Gould v. Staffordshire Waterworks Co.* (1850), 5 Ex. 214, p. 221; *Mackenzie v. Sligo and Shannon Rail. Co.* (1850), 9 C. B. 250; *R. v. Biram* (1852), 17 Q. B. 969).

As to procedure on *mandamus*, see s. 21, note "Compelling promoters to proceed."

In cases under s. 68, if the claim is bad, the claimant will not be entitled to any costs although no offer has been made (*Todd v. Metropolitan District Rail. Co.* (1871), 24 L. T. 435, and *Sharpe v. Metropolitan District Rail. Co.* (1879), 4 Q. B. D. 645, 652, 656; not appealed as to this point; see (1880), 5 App. Cas. 425).

The costs of an inquiry before a jury can be recovered by distress warrant under s. 53, but that section does not appear to apply to costs under this section, and there is no similar proviso applicable thereto.

## Sect. 34.

## NOTE.

**35.** The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

Award to be delivered to the promoters of the undertaking.

As to the form of the award, see s. 37 and notes, *post*, p. 69.

As to what the arbitrators are to take into account in assessing the compensation, see s. 63, and as to the principles of compensation for injuriously affecting, see notes to s. 68.

**"The arbitrators shall deliver."**—The arbitrators or umpire are not bound to deliver the award until their charges (if reasonable) shall have been paid to them. They have a lien at common law for reasonable charges which the statute does not take away (*R. v. South Devon Rail. Co.* (1850), 15 Q. B. 1043).

The arbitrators' charges are, however, liable to taxation (*In re Prebble and Robinson*, [1892] 2 Q. B. 602). If the arbitrator has charged for the services of a solicitor in drawing up the award, the promoters can apply to have the solicitor's bill of costs taxed as between solicitor and client under s. 38 of the Solicitors Act, 1843. The taxation takes place in the Chancery Division (*In re Collyer, Bristow & Co.*, [1901] 2 K. B. 839).

**"To the promoters."**—If the promoters refuse or neglect to take up an award, a *mandamus* will issue to compel them to do so and to deliver a copy to the claimant, and they will be bound also in doing so to pay the arbitrator's and umpire's reasonable costs (*R. v. South Devon Rail. Co.* (1850), 15 Q. B. 1043).

A claimant has no right to take up the award, and if he does so and pays the umpire's fees he cannot recover them from the promoters, even although he is entitled to his costs under s. 34. His proper course is that mentioned in the preceding paragraph (*Earl of Shrewsbury v. Wirral Rail. Committee*, [1895] 2 Ch. 812).

Even in cases where a railway company have appointed an arbitrator and joined in an arbitration under this Act under protest a *mandamus* will be granted to compel them to take up the award, and the dispute must be decided in subsequent proceedings (*In re London and North Western Rail. Co. and Walker*, [1900] A. C. 109, and see *R. v. London and North Western Rail. Co.*, [1894] 2 Q. B. 512).

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And it would appear that a *mandamus* will also issue even where the promoters refuse to appoint an arbitrator, and the claimant under s. 25 appoints his arbitrator to act for both (*R. v. West Midland Rail. Co.* (1862), 10 W. R. 583).

In the return to the *mandamus* the promoters may, however, raise any question as to the claimant's right to compensation, such, for example, as that the claimant had already accepted a sum in full satisfaction of his claims (*R. v. West Midland Rail. Co.* (1863), 11 W. R. 857), or that the claimant's interest had not been injuriously affected, and that, therefore, he had no claim to compensation (*R. v. Cambrian Rail. Co.* (1869), L. R. 4 Q. B. 320).

An order to compel the promoters to take up the award may apparently be made in any division of the High Court. Such an order was made by JESSEL, M.R., in the case of *In re Harper and Great Eastern Rail. Co.* (1875), 20 Eq. 39, 40). It had been previously decided (in 1853) that the Court of Chancery had no jurisdiction to order promoters to take up awards under this section (*Sutton Harbour Co. v. Hitchens* (1853), 16 Beav. 381).

The proper remedy, however, is by motion in the King's Bench Division for a prerogative writ of *mandamus*, and it will issue even although the only question between the parties is as to costs (*R. v. London and North Western Rail. Co.*, [1894] 2 Q. B. 512, 519).

As to practice and cases on *mandamus*, see s. 21, *ante*, p. 47.

Submission  
may be made  
a rule of  
court.

**36.** The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

**"A rule of any of the superior courts."**—Section 1 of the Arbitration Act, 1889, *post*, enacts that a submission, unless a contrary intention is expressed therein, shall have the same effect in all respects as if it had been made an order of court. Section 24 of that Act makes it applicable to every arbitration under any Act, except in so far as it is inconsistent with the Act regulating the arbitration. It would appear, therefore, that application is no longer necessary, as the submission will have the effect of an order of court.

**Enforcing the award.**—I. *Under the Arbitration Act.*—Section 12 of the Arbitration Act, 1889, provides that an award on a submission may by leave of court or a judge be enforced in the same manner as a judgment or order to the same effect. See the note thereto, *post*.

As the arbitrators have no power to settle any question as to the claimant's right to compensation, but merely the amount (see cases to s. 23, *ante*, p. 50), it would appear that this section is not applicable for the purposes of enforcing awards under the Lands Clauses Acts, at least in cases where the claimant's right to compensation is in dispute.

Prior to this Act these awards could not be enforced by motion, but it was necessary to bring an action (*Newbold v. Metropolitan Rail. Co.* (1863), 14 C. B. (n.s.) 405; *In re Walker and Beckenham Local Board* (1884), 50 L. T. 207).

Section 7 enables the arbitrator to state his award in the form of a special case, so that doubtful questions of law may be decided in that manner.

II. *By action.*—This was the most usual method of enforcing awards prior to the Arbitration Act, 1889, and that Act does not appear to have taken away this remedy. See, for example, *Thompson v. Tottenham and Forest Gate Rail. Co.* (1892), 67 L. T. 416.

The promoters can enforce the award by depositing the amount assessed in the bank and executing a deed poll under ss. 76, 77, *post*, whereupon the land vests in them. But if for any reason they cannot proceed in this way,

the promoters may bring an action for specific performance (*Regent's Canal Co. v. Ware* (1857), 26 L. J. Ch. 566).

In order that the promoters may claim specific performance, they must have strictly complied with the provisions of the statute (*Bridgend Gas and Water Co. v. Dunraven* (1885), 31 Ch. D. 219).

The owner can also bring an action for specific performance as soon as the relation of vendor and purchaser is completed by the price being ascertained (*Harding v. Metropolitan Rail. Co.* (1872), L. R. 7 Ch. 154).

See cases as to specific performance collected in note to s. 6, *ante*, p. 14.

The owner may also bring an action for the amount of compensation awarded, but the action for such compensation cannot be maintained until a conveyance of the land has been executed (*East London Union v. Metropolitan Rail. Co.* (1869), L. R. 4 Ex. 309, following the general rule laid down in *Laird v. Pim* (1841), 7 M. & W. 474; and see *Howell v. Metropolitan District Rail. Co.* (1881), 19 Ch. D. 508).

In one case an attempt was made to compel the company to complete the purchase by the landowner applying to have the company wound up; but it was held that until the title was investigated no debt was due which would constitute the landowner a creditor under s. 82 of the Companies Act, 1862 (25 & 26 Vict. c. 89) (*In re Milford Docks Co.* (1883), 23 Ch. D. 292).

If, however, the company agree to pay the amount within three days of the award, and that thereupon the landowner shall execute a conveyance, these are not dependent conditions, and the company must pay the money although the conveyance has not been tendered (*Lindsay v. Direct London and Portsmouth Rail. Co.* (1850), 1 L. M. & P. 529).

As to when interest can be recovered, see *supra*, s. 6, note "Interest."

In the defence of such an action it is, of course, open to the promoters to raise any question as to the claimant's right to compensation or title to the land. See *Read v. Victoria Station Rail. Co.* (1863), 32 L. J. Ex. 167; *Beckett v. Midland Rail. Co.* (1866), L. R. 1 C. P. 241, for forms of declarations and pleas.

As to staying an action on an award under special provisions, see *Metropolitan Board of Works v. Salisbury* (1872), 26 L. T. 390.

As to raising such questions on *mandamus*, see note to s. 35, *ante*.

**Attaching the amount found due.**—On the same principle that an action cannot be brought for the amount until the conveyance has been executed, it has also been held that the amount cannot be attached by a garnishee order as a "debt due or accruing" under Order 45, r. 3, of the Rules of the Supreme Court, until such conveyance has been executed, as it is merely a conditional debt. Nor can it be attached by garnishee order served after the execution of the conveyance when the money has been paid into court in pursuance of a judgment of the court in an action for specific performance by the landowner, as the money is not then a debt "in the hands" of the garnishee (*Howell v. Metropolitan District Rail. Co.* (1881), 19 Ch. D. 508). *A fortiori*, a notice to treat would not constitute such a debt as could be attached (*Richardson v. Elmit* (1876), 2 C. P. D. 9).

The costs might probably be attached before the execution of the conveyance, as they are due independently of the execution (*Capell v. Great Western Rail. Co.* (1883), 11 Q. B. D. 345; and see s. 34, note "Recovery of the costs").

**Setting aside an award.**—See note to next section, and to s. 11 of the Arbitration Act, 1889, *post*.

**Remitting award.**—Section 10 of the Arbitration Act, 1889, gives the court power to remit an award to the reconsideration of the arbitrator or umpire. See *post*, and note to s. 37, *infra*.

**37.** No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form. Award not void through error in form.

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**NOTE.**

**Sect. 37.****NOTE.**

**"Irregularity or error in matter of form."**—By s. 7 (c) of the Arbitration Act, 1889, arbitrators and umpires are empowered to correct in an award any clerical mistake or error arising from any accidental slip or omission. See note to that section, *post*.

An award will not be invalid because a single sum may be awarded when the claims are made under two different heads, as for the value of the land taken and damages caused by severance (*Bradshaw's Arbitration* (1848), 12 Q. B. 562); nor when separate claims are made for the value of the land taken and for injuriously affecting other land of the same person which is not taken (*Brogden and Llynvi Valley Rail. Co.* (1860), 9 C. B. (N.S.) 229).

As to the same point in the case of a verdict by a jury, see s. 49, *post*.

It is more satisfactory, however, that the award should state the amount awarded for each head of compensation, for, in the event of a lump sum being awarded, and the promoters afterwards desiring to dispute the claimant's right to compensation in respect of one particular claim, they would be unable to sever this amount from the total, and the result would be that if one item was bad the whole award would be bad, and this would be a good defence to an action on the award (*Beckett v. Midland Rail. Co.* (1866), L. R. 1 C. P. 241; *Duke of Buccleuch v. Metropolitan Board of Works* (1868), L. R. 3 Ex. 306, 321; (1870), L. R. 5 Ex. 221, 227; (1872), L. R. 5 H. L. 419). Formerly the assessment would have had to be made afresh, but now the matter would probably be remitted under s. 10 of the Arbitration Act, 1889. See also cases in this note, *infra*.

Where the arbitrator was to assess the sum to be paid for the purchase of certain lands and what other, if any, sum should be paid by way of compensation for the damage or injury, if any, to be sustained by reason of the severance or other injurious affecting of other lands not taken, and the arbitrator in his award merely awarded a sum in respect of the purchase of the lands taken, and the award was silent as to any severance or damage, it was held that the award was good, as the arbitrator, by his silence, negatived any right to compensation in respect of severance or other injury (*Beaufort and the Swansea Harbour Trustees* (1860), 29 L. J. C. P. 241).

The arbitrator has no power to award that the promoters do pay the amount assessed, but if he do so, the award will only be irregular in matter of form, and will not vitiate the award in so far as it determined the amount of damages (*In re Harper and Great Eastern Rail. Co.* (1875), 20 Eq. 39; *Lindsay v. Direct London and Portsmouth Rail. Co.* (1850), 1 L. M. & P. 529).

A party to a reference cannot object to an award on the ground that a wrong assumption has been made, which, if made, would be in his favour, as, for example, a landowner cannot object that the assessment has been made on the assumption that he was owner in fee simple in possession when, in fact, he had held the land subject to a leasehold interest (*Bradshaw's Arbitration* (1848), 12 Q. B. 562).

In a case where the award recited that the umpire "having fully heard and maturely considered the evidence produced by the said company and the said J. Skerratt," and it appeared that there was no evidence produced by the company, but it rested entirely on Mr. Skerratt's own evidence, this was held to be merely an irregularity in matter of form under this section, and did not invalidate the award (*Skerratt v. North Staffordshire Rail. Co.* (1848), 5 Rail. Cas. 166, p. 178).

In the same case, an objection was taken to the award on the ground that it did not include all the matters referred, for not only was the value of the land referred, but also what communications and archways were to be made, and the award only included the value of the land; but it was held that the two things were quite distinct, and that two awards might be made, for, in fact, the communications could not be properly ascertained at the time (*ibid.*, p. 177).

**Setting aside and remitting awards.**—*Awards good on the face.*—It is a general principle of law in respect of arbitrations by consent—among which are included arbitrations under this Act (see note to s. 25)—that an award

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**NOTE.**

cannot be set aside or remitted if it appear good upon the face of it and within the jurisdiction of the arbitrator and there has been no misconduct. The law on this subject was summed up by BLACKBURN, J., in *Duke of Buccleuch v. Metropolitan Board of Works* (1870), L. R. 5 Ex. 221, p. 232, affirmed as to this L. R. 5 H. L. 418, as follows: "In cases where an award is good on the face of it, but the arbitrator has made a mistake either of law or of fact, if that mistake has been as to a matter within the arbitrator's authority, then, inasmuch as there is no court of appeal from the arbitrator, the mistake cannot be remedied, nor can the court, even in its exercise of its equitable jurisdiction, set aside the award, unless it can be shown that there was misconduct or some other equitable ground for interference; and in the case of the verdict of a compensation jury, inasmuch as the *certiorari* is taken away, there is no remedy at law at all unless there be excess of jurisdiction. But if the mistake has been as to the extent and nature of the arbitrator's authority, leading him to exceed it, then, inasmuch as an excess of authority by mistake is just as much an excess as if it had been in consequence of a wilful disregard of the limits of the authority, the award may be impeached as being made without jurisdiction." And see *Hodgkinson v. Fernie* (1857), 3 C. B. (N.S.) 189; *Dinn v. Blake* (1875), L. R. 10 C. P. 388; *In re Dare Valley Rail. Co.* (1868), 6 Eq. 429.

If a lump sum be awarded, and it appears on the face of the award, or be proved by extrinsic evidence, that in arriving at the lump sum matters were taken into account which the arbitrator had no jurisdiction to consider, the award is bad. It is not enough to make it bad that the arbitrators have not said in arriving at the lump sum that they had not included claims wrongly made by the claimants, or because the arbitrators had taken evidence on matters not referred, but not shown to have been irrelevant to the inquiry or to have been included in the award of a lump sum (*Falkingham v. Victorian Railway Commissioners*, [1900] A. C. 452).

If the arbitrator admits that he has made a mistake, the award will be referred back to him or set aside (*In re Dare Valley Rail. Co.* (1868), 6 Eq. 429; *Flynn v. Robertson* (1869), L. R. 4 C. P. 324; *Mills v. Bowyer's Co.* (1856), 3 K. & J. 66; *In re Stringer and Riley Brothers*, [1901] 1 K. B. 105).

The arbitrator can also be called as a witness to discover whether he has in fact exceeded his jurisdiction, either by mistake as to the subject-matter or in point of legal principle. Questions may be put to him for the purpose of proving the proceedings before him—the course of the argument, the claims made and the claims admitted, and the history of the litigation before him up to the time when he proceeded to make his award. After that the right of asking questions ceases; the award must speak for itself (*Duke of Buccleuch v. Metropolitan Board of Works* (1870), L. R. 5 H. L. 418; *In re Dare Valley Rail. Co.* (1868), 6 Eq. 429; *O'Rourke v. Commissioner for Railways* (1890), 15 App. Cas. 371).

If, however, there is no evidence of excess of jurisdiction or admitted mistake, the award cannot be remitted or set aside. The power to remit awards to the reconsideration of the arbitrators is now contained in s. 10 of the Arbitration Act, 1889, *post*, which re-enacts in effect a similar provision in the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 8. The cases decided thereon will apply to s. 10 of the Arbitration Act, 1889 (see notes thereto, *post*). The award was not sent back under the previous Act on the ground that the arbitrator had made a mistake in the legal principle, except where he admitted the mistake (*Dinn v. Blake* (1875), L. R. 10 C. P. 388; *Hodgkinson v. Fernie* (1857), 27 L. J. C. P. 66).

If the arbitrator has made his award and has gone wrong in law, he will not be ordered to state a special case under s. 19, nor will the award be remitted to him (*Re Montgomery, Jones & Co. and Liebenthal & Co.* (1898), 78 L. T. 406), but if asked to state a special case and he refuses, and will not allow time to the party to apply to the court in order to obtain same, he will be guilty of misconduct and the award may be remitted or set aside (*Re Palmer & Co. and Hosken & Co.*, [1898] 1 Q. B. 131).

The award could be remitted back on the ground of fresh evidence being

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**NOTE.**

discovered, and an award will now be remitted back on these grounds (*Barnard v. Wainwright* (1850), 19 L. J. Q. B. 423; *In re Keighley & Co. and Bryan, Durant & Co.*, [1893] 1 Q. B. 405).

In the event of any legal difficulty occurring during the arbitration, the arbitrator may either state a special case for the opinion of the court under s. 19 of the Arbitration Act, 1889, or he may deliver his award in the form of a special case under s. 7 of that Act (see *post*).

It is only the amount that is referred to the arbitrator; he has no power to decide as to the validity of the claim, or as to the claimant's title to compensation. See cases collected in note to s. 23, *ante*, p. 50, in note, "The same shall be so settled."

It is open, however, to arbitrators to find that the amount of damage sustained is nil (*Bradby v. Southampton Local Board* (1855), 4 E. & B. 1014; *R. v. Lancaster and Preston Rail. Co.* (1845), 6 Q. B. 759; *East and West India Docks v. Gatlke* (1851), 3 M. & G. 155, 171).

The court has also power to set aside the award on the ground of misconduct of the umpire, or that the award has been improperly procured (s. 11 of the Arbitration Act, 1889, *post*), and in other cases the proper remedy would be to have the award remitted under s. 10 of that Act.

*Awards bad on the face.*—The arbitrator in his award should recite the facts which give him jurisdiction, and should state the nature of the claimant's interest which he has been called upon to assess, and in the body of the award he should declare the value of that interest and no other, otherwise the award may be open to objection. Thus, objection was taken to an award where an arbitrator was appointed to value the plaintiff's interest in the land, and in the body thereof the value of the land itself was stated, the ground of the objection being that it did not appear that he had taken into account the damage by severance under s. 63 (*Barker v. North Staffordshire Rail. Co.* (1848), 12 Jur. 324).

So an award was held bad where the reference was to ascertain the value of an hotel, and the damages sustained or to be sustained by reason of the execution of the works, and the award stated the compensation to be paid to the plaintiff was "for all his interest of whatever nature in the above leasehold"; the ground of the decision apparently being that it was not clear what he had included under this latter expression (*Wakefield v. Llanelly Rail. and Dock Co.* (1864), 34 Beav. 245; cf. *Bradshaw's Arbitration* (1848), 12 Q. B. 562, *supra*).

So where several persons are interested in a piece of land, and they agree to refer the valuation of their interests to arbitration, the award would be bad if it merely declared the value of the fee without apportioning the sum according to their respective interests (*North Staffordshire Rail. Co. v. Lauder* (1848), 17 L. J. Ex. 350).

It is important also that the submissions of the two parties should agree, for, if they differ, the award would appear to be bad. Thus, in a case where the company appointed an arbitrator to assess lands that they desired to take, and the landowner appointed one to assess not only these lands but small parts which would be left, and which he gave notice to the company to take; under s. 93, and the award found a lump sum for both, the award was held bad, but it was not set aside apparently because of the conduct of the parties (*North Staffordshire Rail. Co. v. Wood* (1848), 17 L. J. Ex. 354).

*Procedure.*—On applications to set aside an award on the ground that the arbitrator or umpire has misconducted himself, or that the arbitration or award has been improperly obtained under s. 11 (2) of the Arbitration Act, 1889, the procedure is by motion, and the time within which the motion may be made is limited by O. 64, r. 14, of the Rules of the Supreme Court. See the same set out, and the practice generally in the notes to s. 11 of the Arbitration Act, 1889, *post*. Power to remit the matters referred or any of them to the reconsideration of the arbitrator or umpire is given by s. 10 of the same Act, *post*. The application should be made by summons before a master.

**38.** Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation they shall give not less than ten days' notice to the other party of their intention to cause such jury to be summoned ; and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works (a).

Sect. 38.

Promoters  
of the  
undertaking  
to give  
notice before  
summoning  
a jury.

(a) See ss. 63 and 68 for the general principles of compensation. Sections 38—57 deal with assessment by juries.

**"Any case of disputed compensation."**—The cases here referred to are those mentioned in s. 21. That section deals with cases of dispute arising from the delivery of a notice to treat by the promoters, and failure to come to terms. Of the cases dealt with in s. 21, excluding those over which justices have jurisdiction, it is provided by s. 23 that they shall be settled by the verdict of a jury, unless the landowner desire that the amount shall be settled by arbitration, and in the event of his doing so, if the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made.

Section 68 deals with cases where lands have been taken without a notice to treat, or where they have been injuriously affected. In these cases, if the amount claimed is over £50, the owner may, if he so desire, have the amount settled by arbitration or by jury, and if they do not agree in writing to pay the amount claimed within 21 days, it must be settled in the way he desires. Section 38, however, is not applicable to proceedings under s. 68 ; see next part of this note.

**"They shall give not less than ten days' notice."**—When the lands "have been" taken, and the owner desires under s. 68 to have the amount assessed by a jury, the promoters are not required to give this notice. The ground of this decision appears to be that s. 68 in the cases there mentioned gives the initiative to the landowner, and the landowner knows that if they do not agree in writing to pay him the sum he claims, they must issue their warrant for a jury within 21 days, and as he knows this, no notice is required (*Railton v. York, Newcastle and Berwick Rail. Co.* (1850), 15 Q. B. 404).

In the case of *Richardson v. South Eastern Rail. Co.* (1851), 20 L. J. C. P. 236 ; (1852), 21 L. J. C. P. 122, the above case was questioned, and the court were apparently of the opinion that the words "in manner herein provided" in the 68th section, included all the previous sections, or, at least, all the applicable details before mentioned. The question there was whether the claimant was entitled to his costs, and the court held that he was entitled under s. 51.

The case of *Railton v. York, etc. Rail. Co.* (*supra*), appears, however, to have been followed in several subsequent cases, and in *Hayward v. Metropolitan Rail. Co.* (1864), 33 L. J. Q. B. 73, these cases were discussed, and followed, *Railton's Case* being followed as to no notice being necessary, and *Richardson's Case* as to s. 51 being incorporated in s. 68.

In *R. v. Smith, Re Westfield and Metropolitan Rail. Companies* (1883), 12 Q. B. D. 481, 488, the court treated it as decided that s. 38 did not apply to proceedings under s. 68.

Section 38 will be applicable until possession actually has been taken, and if the promoters give a notice to treat, and afterwards proceed under s. 85, and give a bond and make a deposit, but do not actually enter, the proceedings are under s. 38 and not under s. 68 (*R. v. Manley-Smith, Re Church and London School Board* (1892), 67 L. T. 197 ; *Burkinshaw v. Birmingham and*

**Sect. 38.** *Oxford Junction Rail. Co.* (1850), 20 L. J. Ex. 246, and see cases in note to a. 68).

**NOTE.**

In questions under this section and under a. 68, the landowner will be entitled to ten days' notice of the time and place of the inquiry (a. 46).

*Special jury.*—If either party desire the amount assessed by a special jury, the matter shall be so tried, but the landowner or claimant, if he desire it, must give notice before the promoters issue their warrant for a jury (a. 54).

**"Shall state what sum of money they are willing to give."**—This is of importance in connection with the question of costs. By a. 51, if the jury award the same or a less sum than the promoters have previously offered, each party must bear his own costs. The offer must be made in the notice of their intention to summon a jury; if made after, it is too late (*R. v. Smith* (1883), 12 Q. B. D. 481, and see this discussed in note to a. 51, *post*, "The sum previously offered."

If after receiving this offer and notice the landowner expresses his desire to have the matter referred to arbitration under a. 23, the offer and notice may be apparently withdrawn, and a new offer made. Whether the company has a right to withdraw the notice without such expression of desire for arbitration or without the consent of the other party is doubtful, but if they did so, and the other side did not object, apparently both offer and notice would be withdrawn (*Fitzhardinge v. Gloucester and Berkeley Canal Co.* (1872), L. R. 7 Q. B. 776, *per* BLACKBURN, J., at p. 782). An offer made under this section is not withdrawn by a notice of a desire for arbitration under a. 23, and enures for the benefit of the promoters (*Lascelles v. Swansea School Board* (1892), 69 L. J. Q. B. 24).

If the promoters make an offer before sending the notice, it is open to them to withdraw that offer and make another in the notice of their intention to summon a jury (*Hayward v. Metropolitan Rail. Co.* (1864), 33 L. J. Q. B. 73). It must be made in the notice, otherwise it is of no avail (*R. v. Smith* (1892), 67 L. T. 197).

Warrant for  
summoning  
jury to be  
addressed to  
the sheriff.

**39.** In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any two of them; and if such sheriff be interested in the matter in dispute such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate; and if all the coroners of such county be so interested such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-corporator shall have power, if he think fit, to appoint a deputy or assessor.

**"Sheriff."**—See the definition in s. 3 and note, *ante*, p. 7.

Where any of the lands authorised to be taken are situate within the city or

liberty of Westminster, then the high bailiff of the city and liberty of Westminster or his deputy shall be deemed to be substituted for the sheriff throughout these enactments dealing with the assessment of compensation for such lands by a jury (Lands Clauses Consolidation Act, 1869, s. 3, *post*).

Sect. 39.

NOTE.

**"In every case."**—This must now be taken subject to the exceptions provided by s. 41 of the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119) (see *post*), which provides that questions of compensation in respect of lands taken or injuriously affected by railway companies, which are to be settled by the verdict of a jury under the Lands Clauses Consolidation Act, 1845, may, on the application of either party, be tried in one of the superior courts as a judge may order.

Questions of disputed compensation under s. 68 are included under this section. See notes to s. 38, *supra*.

**"Shall issue their warrant."**—As s. 18 provides that notice shall be given to all the parties interested, each party, it would appear, is entitled to have a separate jury to assess his claim. In a case under the City Improvement Act, 1847 (10 & 11 Vict. c. cclxxx.), this principle was applied and an injunction granted restraining the city of London from proceeding to trial upon a precept according to which the claims for compensation in a house, made by the under-lessee and by under-tenants to him, would have been required to be assessed by one jury upon one trial, GIFFARD, V.-C., expressing the opinion that it is the right of a person who properly makes a separate claim, to have a separate jury, a separate assessment of whatever is due to him, a separate verdict, and a separate payment, and that upon the *precipe* in question the judge could not take that course as he must act in direct and strict accordance with the *precipe*, and the verdict and judgment and all proceedings must follow its terms, and he can have no discretion to depart from it in any respect (*Abrahams v. Mayor of London* (1868), L. R. 6 Eq. 625, 635).

A motion for an injunction was, however, dismissed where the precept under the same Act required the different interests of the same person in different premises to be assessed all together (*Starr v. Mayor of London* (1869), 7 Eq. 236). See *Ecclesiastical Commissioners v. Commissioners of Sewers* (1880), 14 Ch. D. 305, and see s. 18, note "Effect of notice."

**Compelling promoters to issue their warrant.**—As the delivery of a notice to treat gives the landowner the right to have the value of the land assessed and the amount paid, the promoters of an undertaking will be compelled by *mandamus* to issue a warrant to the sheriff to summon a jury under this section within a reasonable time after such notice. The procedure may be by motion for the prerogative writ or by action (*Fotherby v. Metropolitan Rail. Co.* (1866), L. R. 2 C. P. 188; *R. v. Mayor of London* (1867), 16 L. T. 673).

Similarly, where the special Act required six months' notice to be given to the owners of interests in lands required to be taken, and an occupier of premises had removed after receiving such notice, and in consequence thereof he was held entitled in an action to a *mandamus* to compel them to proceed and to substantial damages (*Morgan v. Metropolitan Rail. Co.* (1868), L. R. 4 C. P. 97; and see *Birch v. Vestry of St. Marylebone* (1869), 20 L. T. (N.S.) 697).

Where arbitration proceedings to settle the value of land had fallen through, and the landowner had given notice to the company requiring them to issue their warrant for a jury to assess the amount, it was held, on motion for a prerogative writ, that the claimant was entitled, after refusal by the company, to a *mandamus* to compel them to issue their warrant; that it was enough to show a refusal; and that no formal notice to the company was required (*In re South Yorkshire, Doncaster and Goole Rail. Co., Ex parte Senior* (1849), 18 L. J. Q. B. 333).

As to a case of refusal to grant *mandamus* prior to the Lands Clauses Acts, see *Ex parte Parkes* (1841), 9 D. P. C. 614.

**Practice as to mandamus.**—See s. 21, note "*Mandamus*," *ante*, p. 47.

**Sect. 39.****NOTE.**

*Form of warrant.*—See form, Appendix.

The precept or warrant must be consistent with the notice to treat and ought not to contain less or more than therein contained, except in the case where the parties have agreed as to the price, otherwise the promoters will be restrained from proceedings as to part of the lands (*Stone v. Commercial Rail. Co.* (1839), 1 Rail. Cas. 375).

If they are inconsistent and the landowner nevertheless appears, and the case proceeds in the usual way, he will be held to have waived the objection (*Ex parte Crawshaw Bailey* (1852), Bail Ct. Cas. 66).

In issuing a warrant to a sheriff to summon a jury to assess compensation under s. 68, it is not advisable that the warrant should call upon them to assess the damages, "if any," but the verdict will not be quashed if the jury return the damages at *nil* (*R. v. Lancaster and Preston Rail. Co.* (1845), 6 Q. B. 759).

"**Promoters of the undertaking.**"—See definition, a 2, and as to being under their hands and seal, see s. 6, note "To agree," *ante*, p. 11. As to a question as to who were commissioners under a local Act for the purpose of summoning a jury, see *Ostler v. Cooke* (1852), 18 Q. B. 831.

"**If such sheriff be interested.**"—By s. 3, *supra*, unless there be something either in the subject or context repugnant to such construction, the word "sheriff" shall include under-sheriff or other legally competent deputy. It has been held, however, that, in the above expression in this section, there is something repugnant to such construction, and that, if the under-sheriff is interested as a shareholder in the company, the warrant may, nevertheless, be properly issued to the sheriff. In such a case, the under-sheriff ought not to intermeddle, but the sheriff should either take the inquisition himself or appoint a competent disinterested deputy (*Worsley v. South Devon Rail. Co.* (1851), 16 Q. B. D. 539; *Ex parte Baddeley* (1849), 5 Rail. Cas. 542).

If there are two sheriffs and one is interested, the precedents seem to establish the practice that the process should go to the other and not to the coroner (*Letson v. Bickley* (1816), 5 M. & S. 144, and cases there cited).

This provision against the interest of the sheriff was introduced for the protection of the party against whom the interest would operate, and he may waive the objection if he so elects. So that where the under-sheriff acted, but gave notice of his interest before any step was taken, and no objection was taken, the objection was held to have been waived, and a *certiorari* to bring up the proceedings refused (*Ex parte Baddeley* (1849), 5 Rail. Cas. 542; and see *Corrgal v. London and Blackwall Rail. Co.* (1843), 3 Rail. Cas. 411).

If the sheriff is interested (as being a shareholder), a *certiorari* will issue to bring up the inquisition, notwithstanding the provision in s. 145, *post*, and notwithstanding that no damage has been occasioned in consequence (*R. v. London and North Western Rail. Co.* (1863), 9 L. T. (N.S.) 423; and see *Ex parte Baddeley* (1849), 5 Rail. Cas. 542).

As to the interest that will disqualify a sheriff, it must be a direct pecuniary interest and not remote or contingent, the principle being the same as that according to which a man at common law is disqualified from acting as a judge. See as to this, s. 3, definition "Justice." Thus, where at the time of the summoning of a jury, and the taking of an inquisition on a warrant issued to the sheriff, the sheriff was a shareholder in a company between which company and the one issuing the warrant there was an executory contract by which the two might become amalgamated, it was held that this interest was too contingent and remote and not direct and certain, and that the proceedings were therefore valid (*R. v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1867), L. R. 2 Q. B. 336).

From the same case it would appear that if the sheriff is interested the proceedings would be invalid, although the under-sheriff acted and the sheriff did not interfere at all.

If, in the case of local improvements, the sheriff is a ratepayer and liable to be rated in respect of the same, this is sufficient interest to disqualify him, unless there is a proviso in the special Act that he is not thereby to be dis-

abled. To show mere opportunity of knowledge will not be sufficient to prove that the interest has been waived (*R. v. Sheriff of Warwickshire and Corporation of Birmingham* (1855), 3 W. R. 164).

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**NOTE.**

"To appoint a deputy."—The sheriff may also appoint a deputy according to the definition in s. 3, *supra*, p. 4.

The deputy should continue to hold the inquiry although his principal may be present during part of it, and he should sign it in the name of his principal, and may add "by —, his deputy" (*R. v. Perkin* (1845), 7 Q. B. 165; *Stroud v. Watts* (1846), 3 D. & L. 799).

**40.** Throughout the enactments contained in this Act relating to the reference to a jury, where the term "sheriff" is used, the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place; and in every case in which any such warrant shall have been directed to any other person than the sheriff such sheriff shall, immediately on receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same, the jurors book and special jurors list belonging to the county where the lands in question shall be situate.

Provisions applicable to sheriff to apply to coroner.

"**Sheriff.**"—See definition, s. 3, and note.

The enactments referred to are more particularly ss. 41—45, 47—50, and 57, and, as to special juries, ss. 54, 55.

"**Coroner or other person.**"—As to when the coroner may act, and as to what other persons may act, see s. 39, *supra*.

**41.** Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the superior courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.

Jury to be summoned.

"**Such warrant**" is the warrant which, by s. 39, the promoters are required to issue.

"**Sheriff,**" or other person acting. See ss. 39 and 40.

**Fees.**—A scale of fees to be charged by a sheriff in connection with inquiries under this Act, has been made under the Sheriffs Act, 1887 (50 & 51 Vict. c. 55), by order of the Lord Chancellor, and dated August 2nd, 1900. It is as follows:

SCALE OF SHERIFF'S FEES FOR INQUIRIES UNDER THE LANDS CLAUSES ACT, 1845.

	£	s.	d.
1.—Notice of nominating special jury ... ..	0	5	0
2.—Notice of holding inquiry ... ..	0	5	0
3.—Nominating jury ... ..	2	2	0
4.—Notices of reducing ... ..	0	5	0

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## NOTE.

	£	s.	d.
5.—Reducing ... ..	1	1	0
6.—Twenty-four warrants to summon special jury ... ..	1	4	0
7.—Summoning officer, 2s. each ... ..	2	8	0
8.—Attending, engaging room, and afterwards attending arranging room ... ..	0	5	0
9.—For hire of room—reasonable amount actually paid ... ..	—	—	—
10.—{ Presiding in court and } three hours ... ..	5	5	0
{ Preparing inquisition } all day ... ..	10	10	0
11.—Attending filing inquisition ... ..	0	13	4
12.—Incidental expenses ... ..	1	1	0
13.—Clerk ... ..	2	2	0
14.—Ushers ... ..	0	10	0
15.—Copy warrant ... ..	0	5	0
16.—Subpoena for three names ... ..	0	5	0
17.—Under-sheriff's view (if required) ... ..	1	1	0
18.—Travelling allowance for under-sheriff and clerk—reasonable expenses actually incurred ... ..	—	—	—

NOTE.—Common jury same as special jury.

**"Shall summon."**—If the warrant has been properly issued to the sheriff, he must summon the jury and proceed, and if he refuse, a *mandamus* will issue ordering him to proceed (*Walker v. London and Blackwall Rail. Co.* (1842), 3 Q. B. 744). In that case the sheriff having summoned a jury refused to proceed on the ground that he was of opinion that the precept did not authorise him to take their verdict.

If the sheriff make default in any of the matters required to be done by him, he is liable under s. 44, *post*, p. 80, to a penalty of £50.

**Postponement.**—In a case under a local improvement Act where the precept issued to the recorder as judge of the mayor's court to summon a jury for a day named, and he at the request of the landowner postponed the execution of the precept, the company applied for a *mandamus* to compel him to proceed, or in the alternative for a *certiorari* to bring up his order for postponement to be quashed. It was held that the recorder had no power to postpone the proceedings, and the *certiorari* was granted as the proper remedy. It proved, however, a futile remedy in this case, as the order could not be brought up and quashed until after the date to which the proceedings were postponed had passed (*Galloway v. Corporation of London* (1866), 12 Jur. (n.s.) 182).

**Verdict of jury set aside.**—Where the verdict of a jury has been set aside by a superior court, it is the duty of the sheriff to proceed under the old warrant, and to summon a fresh jury. The claimant ought not to give a fresh notice, and the promoters are not required to issue a new warrant (*Horrocks v. Metropolitan Rail. Co.* (1865), 19 C. B. (n.s.) 139). In the case of a railway company, the claimant cannot apply after the verdict has been set aside to a judge of the High Court, to have the case tried in the High Court, under the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119) (*Tanner v. Swindon Rail Co.* (1881), 45 L. T. 209).

**"Common jurymen in the superior courts."**—This is regulated by many statutes, of which the principal are 6 Geo. 4, c. 50, and the Juries Act, 1870 (33 & 34 Vict. c. 77).

If the jurymen are disqualified they may be objected to by challenge, as provided in s. 42, *infra*; and the court will not set aside a verdict on the ground that some of the jurymen were not qualified if they have not been challenged (*In re Chelsea Waterworks Co., Ex parte Phillips* (1855), 10 Ex. 731).

If a juror so summoned does not appear, he is liable to a penalty of £10 unless he can show reasonable excuse (s. 44, *infra*).

**"Give notice to the promoters."**—The promoters must then give ten days' notice to the other party by s. 46.

**42.** Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the superior courts are by law required to be drawn, and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array. **Sect. 42.**  
Jury to be impanelled.

**"Are by law required to be drawn."**—See 6 Geo. 4, c. 60, and 33 & 34 Vict. c. 77.

**"Duly qualified as aforesaid,"** as provided in s. 41.

**"Of the bystanders."**—These are called talesmen and may be challenged as the others (6 Geo. 4, c. 50).

**"Their lawful challenges."**—These are challenges of the individuals, called challenges of the polls as distinguished from challenges to the array. Sir E. COKE reduced the grounds of challenge to four:

1. *Propter honoris respectum*, e.g., a peer of Parliament who may be challenged by either party, or may excuse himself.
2. *Propter defectum*, for defect of birth, if the person is an alien, not domiciled or naturalised; defect of sex, as no female can serve; defect of estate or qualification, as to age and property.
3. *Propter affectum*, for suspicion of bias or partiality such as relationship or interest.
4. *Propter delictum*, for conviction of some crime. Co. Litt. 156 b, and the Juries Act, 1825 (6 Geo. 4, c. 50), ss. 27, 29, 50.

If the jurymen are not qualified, this point cannot be raised after verdict, if they have not been challenged as herein provided (*In re Chelsea Water-works Co., Ex parte Phillips* (1855), 10 Ex. 731).

In a case where twelve jurymen were chosen to assess, and one was taken ill before any hearing had taken place, and another was chosen to take his place, and duly sworn and not challenged, although objection was taken, the court refused to allow this objection to be raised by the promoters in an action by the landowner to recover the amount of the verdict (*Cooling v. Great Northern Rail. Co.* (1850), 15 Q. B. 486).

**"Shall challenge the array."**—That is a challenge of all the jurors appearing collectively, on account of some partiality or default of the sheriff.

**43.** The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law; and if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question; and on the like request the sheriff shall order the jury, or Sheriff  
to preside,  
witnesses  
to be sum-  
moned.

**Sect. 43.**

any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the superior courts.

**The sheriff**, or the other persons referred to in ss. 3, 39, 40 of this Act, and s. 3 of the Lands Clauses Consolidation Act, 1869, and see notes to these sections.

In a case prior to the Lands Clauses Act, 1869, where the deputy high bailiff of Westminster presided, and the case was conducted before him without objection, one of the parties applied for a *certiorari* to have the verdict quashed for want of jurisdiction; but the court refused to assist the applicants by this remedy (*Emanuel Hospital v. Metropolitan District Rail. Co.* (1869), 19 L. T. 692).

**"All such rights and privileges."**—The sheriff must act in direct and strict accordance with the warrant, and the verdict and all proceedings must follow its terms, and he has no discretion to depart from it in any respect (*Abrahams v. Mayor of London* (1868), 8 Eq. 625, 635); and see note to s. 18, "Effect of notice," and s. 39, note, "Shall issue their warrant."

The jury must be sworn before they proceed to the inquiry (s. 48 and note).

Under a similar provision in a local Act, it was contended that the rights and privileges there spoken of, included a right to costs, but it was held that these words were clearly intended not for this purpose, but to regulate the general course of proceedings, to remove doubts concerning the right to begin, and to show in other respects how the inquisition should be conducted (*Rex v. Gardner* (1837), 6 Ad. & E. 112, 117). The same point was raised on similar words in another local Act, and the above case was followed (*R. v. Sheriff of Warwickshire* (1841), 2 Rail. Cas. 661).

**"As a witness."**—By s. 45, *infra*, any person summoned as a witness, who does not attend, is liable to a penalty of £10, but his reasonable expenses must have been tendered to him.

**"View."**—In the High Court this is regulated by the Rules of the Supreme Court, Order 50, rr. 3 and 5. By these the court or a judge has power upon the application of any party to a cause or matter, and upon such terms as may be just, to make any order for the inspection by a jury of any property or thing being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid to authorise any persons to enter upon or into any land or building in the possession of any party to such cause or matter.

Penalty  
on sheriff  
and jury for  
default.

**44.**—If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit fifty pounds for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the superior courts; and if any person summoned and returned upon any jury under this or the special Act, whether common or special, do not appear, or if appearing he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds, and every such penalty payable by a sheriff or jurymen shall be applied

in satisfaction of the costs of the inquiry, so far as the same will extend; and in addition to the penalty hereby imposed every such juryman shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of an issue joined in any of the superior courts.

Sect. 44.

*"In the matters hereinbefore required to be done by him."*—These are the matters mentioned in ss. 40—43. As to the fees payable to a sheriff, see note to s. 41, *ante*, p. 77.

*"Shall be recoverable."*—By s. 136, *infra*, penalties under this Act are recoverable by summary procedure before justices. The case of the sheriff is by this section excepted, and the procedure against him is by action.

*"Regulations, pains, and penalties."*—As to regulations, see 17 & 18 Vict. c. 125, s. 59; 33 & 34 Vict. c. 77, s. 31. As to fines, see 6 Geo. 4, c. 50, ss. 38, 51, 53, 54.

45. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons, without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuse to be examined on oath touching the subject matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds.

Penalty on witnesses making default.

*"Duly summoned,"* i.e., summoned by the sheriff as provided in s. 43 *supra*.

*"To be examined on oath"* or affirmation in the cases provided for by the Oaths Act, 1888. See as to this, the note to s. 32, *ante*, p. 61.

46. Not less than ten days' notice of the time and place of the inquiry shall be given in writing by the promoters of the under-taking to the other party.

Notice of inquiry.

*"Ten days' notice."*—By s. 41, the sheriff fixes the time and place within the limits there mentioned, and gives notice thereof to the promoters; the promoters by this section give notice to the other party.

In a Scotch case under a similar enactment in the Lands Clauses Consolidation (Scotland) Act, 1845, it was held that the provision was imperative and not merely directory, and applied to special as well as common juries, but that it might be waived by the party for whose benefit it was enacted, and that such waiver may be inferred from his conduct, as when he attended before the sheriff and agreed to the fixing of the day (*Lang v. Glasgow Court House Commissioners* (1871), 9 Ct. of Sess. Cas., 3rd series, 768).

In cases where the compensation is required to be assessed by a jury under s. 68, the limit of time within which they can make an offer to save them from having to pay the costs of the claimant under s. 51, is at the time of giving notice under this section. See s. 38, note, "They shall give not less than ten days' notice," and s. 51, note.

**Sect. 47.**

If the party  
make default  
the inquiry  
not to  
proceed.

**47.** If the party claiming compensation shall not appear at the time appointed for the inquiry such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided.

**"Shall not appear,"** i.e., after due notice to him for that purpose provided by s. 46, and see s. 59.

**"Two justices."**—See definition, s. 3.

**"In manner hereinafter provided,"** i.e., in ss. 59—63.

Jury to be  
sworn.

**48.** Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage; and the sheriff shall administer such oaths as well as the oaths of all persons called upon to give evidence.

**"Oaths"** or affirmation in the cases when affirmations may be made instead of an oath taken. See the Oaths Act, 1888 (51 & 52 Vict. c. 46), and note **"Affirmation,"** to s. 32, *ante*, p. 61.

Sums to be  
paid for  
purchase of  
lands and for  
damage to  
be assessed  
separately.

**49.** Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which under the provisions herein contained he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

**Principles upon which value and compensation to be assessed.**—The cases upon these, when land has been or is to be taken, are collected in the notes to s. 63, and the cases when lands are injuriously affected without land held therewith being taken, are collected in the notes to s. 68. By s. 63 it is provided that justices, arbitrators, and surveyors in assessing compensation shall have regard to the same matters, as the jury under s. 49. Although the words in the two sections are slightly different there can be no doubt that the legislature intended that the same measure of compensation should exist in all cases whether determined by arbitrators, justices, surveyors, or juries (*Holt v. Gas Light and Coke Co.* (1872), L. R. 7 Q. B. 728, 736). The assessors of compensation mentioned in s. 63 are not, however, required thereby to deliver separate assessments. See *In re Bradshaw's Arbitration* (1848), 12 Q. B. 562, 572.

"**Shall deliver their verdict separately.**"—If the jury do not give their verdict separately the proceedings will not necessarily be void. In two cases under similar provisions in special Acts prior to the Lands Clauses Acts, such words were held not to be in the nature of a condition but to be directory only, so that the company or the claimant might have called upon the jury to give separate verdicts for the value of the lands and for the damage, but if neither party call upon the jury to do so at the time, they cannot afterwards treat the verdict as a nullity and obtain a *mandamus* to compel the sheriff to summon a new jury, etc., nor can the company plead it as an answer to an action upon the verdict (*In re London and Greenwich Rail. Co.* (1835), 2 A. & E. 678; *Corrigal v. London and Blackwall Rail. Co.* (1843), 5 M. & G. 219, 249).

In a case where a jury was summoned to assess the value of a lease and damages by severance and otherwise, and a verdict for a lump sum was agreed by counsel to be taken by consent, such verdict was held to be an assessment of the claim, and to include both the value of the interest and damage by severance and loss of trade (*Re North London Rail. Co., Ex parte Hayne* (1865), 12 L. T. (N.S.) 200).

*Jurisdiction of jury.*—See note to s. 50 under same heading.

**50.** The sheriff before whom such inquiry shall be held shall give judgment for the purchase money or compensation assessed by such jury, and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all courts and elsewhere; and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.

**Sect. 49.**  
**NOTE.**

Verdict and judgment to be recorded.

*Sheriff.*—See definition, ss. 3, 40.

**Jurisdiction of sheriff and jury.**—*Title.*—The jurisdiction of a sheriff and jury is confined, as in the case of justices and arbitrators, to settling the amount only, and they cannot determine the claimant's interest or his title to the amount assessed (*R. v. London and North Western Rail. Co.* (1854), 3 E. & B. 443; *Cooper v. North London Rail. Co.* (1865), 34 L. J. Ch. 373; *Brandon v. Brandon* (1864), 34 L. J. Ch. 333). And see cases collected in a. 23, note "The same shall be so settled."

Where a jury is summoned to assess the amount claimed by a party, the promoters are not precluded thereby from subsequently questioning the right of the claimant to any compensation, whether the claim is made for injurious affection under s. 68 (*East and West India Docks v. Gatlke* (1851), 3 Mac. & G. 155; *Read v. Victoria Rail. Co.* (1863), 32 L. J. Ex. 167; *Chapman v. Monmouthshire Railway and Canal Co.* (1857), 2 H. & N. 267), or for

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an interest in land taken (*Cooper v. North London Rail. Co.* (1865), 34 L. J. Ch. 373). Where counsel by consent agree to a verdict for a lump sum for the interest taken, and for damages, that does not preclude the promoters from afterwards disputing the claimant's title (*Re Hayne* (1865), 12 L. T. (N.S.) 200). Nor does a proviso in the special Act that the finding shall be conclusive prevent the promoters from afterwards raising the question of the claimant's title (*Barber v. Nottingham, etc. Canal Co.* (1864), 15 C. B. (N.S.) 726).

In a case where a jury inquired into the claimant's title to a right of way, and found that the right did not exist, and assessed compensation on the assumption that it did not exist, the whole verdict and judgment were considered bad and quashed (*R. v. London and North Western Rail. Co.* (1854), 3 E. & B. 443).

Similarly, where the claimant claimed damages for loss of support to premises and consequent cracking, and the jury found that the premises were new, and the land would have sunk if the buildings had not been there, and, therefore, found that the claimant was entitled to no compensation, and assessed no damage for the cracks, the verdict was held bad. See *Horrocks v. Metropolitan Rail. Co.* (1863), 4 B. & S. 315. It is open to the jury, however, to find that no damage has been done, and, therefore, find no amount due, and this would appear to be the proper finding, instead of finding, say, a farthing due. Nominal damages ought not to be awarded (*R. v. Lancaster and Preston Rail. Co.* (1845), 6 Q. B. 759).

*Collateral matters.*—The jury can only find a sum of money, and cannot order anything to be done, as, for example, to direct the promoters to erect a fence. In a case where they did so, the verdict was not set aside as it did not appear that less money was awarded on that account (*R. v. South Holland Drainage Trustees* (1838), 8 A. & E. 429). But the verdict of a jury was quashed where it awarded beyond the value of the land a sum apparently for the purposes of building a bridge to join the severed portions of the owner's land (*R. v. South Wales Rail. Co.* (1849), 13 Q. B. 988; cf. *In re Byles and the Ipswich Dock Commissioners* (1855), 25 L. J. Ex. 53, and note to s. 23).

If the parties consent any other inquiry may be made by the jury when it is a special one. Section 56.

*Wrong principle of compensation.*—If the jury proceed on a wrong principle of compensation, and award compensation for matters which are not the subject of compensation, this will also be excess of jurisdiction, and the verdict may be set aside unless the part that is bad can be separated from the others (*Caledonian Rail. Co. v. Ogilvy* (1856), 2 Macq. 229; *R. v. Scard* (1894), 10 T. L. R. 545; *Re Penny and South Eastern Rail. Co.* (1857), 7 E. & B. 660).

*Interest.*—The jury have not power to award interest if the claimant has left his claim unascertained for years, and the promoters have been ready and willing to meet the demand (*Caledonian Rail. Co. v. Carmichael* (1870), L. R. 2 H. L. (Sc.) 56).

*Setting aside or varying the verdict.*—If the sheriff and jury act within their jurisdiction the judgment cannot be set aside or varied. If they act in excess of their jurisdiction it can be set aside or varied.

*When it cannot be set aside.*—Section 145 of this Act expressly takes away the right of removing any proceeding into the High Courts by *certiorari* or otherwise, and it also provides that no proceeding shall be quashed or varied for want of form. That section does not take away the right of the High Court to grant a *certiorari*, but a writ of *certiorari* can only issue where the jurisdiction has been exceeded (*Couper Essex v. Local Board for Acton* (1889), 14 App. Cas. 153, p. 160).

The verdict cannot be set aside, although there has been misdirection,

improper rejection of evidence, or perverseness in the finding, as it could be in a trial *at nisi prius* (*R. v. Eastern Counties Rail. Co.* (1843), 3 Rail. Cas. 466; *R. v. London and North Western Rail. Co.* (1854), 3 E. & B. 443, p. 475).

And the court has no power to grant a new trial of an issue directed under s. 41 of the Regulation of Railways Act, 1868 (*Birmingham Land Co. v. London and North Western Rail. Co.* (1889), 22 Q. B. D. 435).

Nor was the verdict set aside for irregularity in the proceedings where there was an omission to strike the special jury in sufficient time to allow three days for summoning them, in consequence of which only eight appeared and assessed the compensation (*Ex parte Great Western Rail. Co., Re Sheriff of Gloucester* (1851), 18 L. T. (o.s.) 92).

*Or varied.*—The amount cannot afterwards be varied if the jury have acted within their jurisdiction. If there are materials upon which a jury are entitled to award damages, a higher court cannot review their finding, nor can it be said that their jurisdiction is gone because the jury may have awarded too much, or because the sheriff may have over-stated or understated the result of the evidence given (*Cowper Essex v. Local Board for Action* (1889), 14 App. Cas. 153, 160, 168; *Streatham Estates Co. v. Commissioners of Public Works* (1888), 52 J. P. 615).

Nor can the company allege in an action on the verdict that the claimant is only entitled to a sum not exceeding £50, as such a plea could only be good where the compensation claimed was under that sum (*Read v. Victoria Station and Pimlico Rail. Co.* (1863), 1 H. & C. 826).

*When it can be set aside.*—If the sheriff be an interested party the verdict can be set aside, because then he has no jurisdiction (*R. v. London and North Western Rail. Co.* (1863), 12 W. R. 208), and if the jury act in excess of their jurisdiction it can also be set aside, and the proper remedy in either of these cases is, notwithstanding s. 145, to have the judgment removed by writ of *certiorari* into a superior court and quashed (*R. v. South Wales Rail. Co.* (1849), 13 Q. B. 988; *In re Penny and South Eastern Rail. Co.* (1857), 7 E. & B. 660, and cases cited in the notes to s. 145).

After the sheriff has delivered judgment and signed it as required, he would appear to be *functus officio*, and a prohibition will not lie to prevent the judgment being recorded (*Chabot v. Lord Morpeth* (1844), 15 Q. B. 446).

(As to the principles guiding the courts in setting aside awards under this Act, see s. 37, p. 70, note, "Setting aside and remitting awards.")

In the case of *R. v. Sheppard* (1880), 9 Q. B. D. 741, BRAMWELL, L.J., expressed a doubt as to whether the court had jurisdiction to quash an inquisition which was good upon the face of it. This point was referred to in *Mortimer v. South Wales Rail. Co.* (1859), 1 E. & E. 375, where it was held that if the inquisition is good on the face of it no plea of excess of jurisdiction can be allowed in an action on it. It was suggested that the proper remedy was "*certiorari*," which, however, was refused in that case (p. 382). But the point was discussed in *Penny v. South Eastern Rail. Co.* (1857), 7 E. & B. 660, where it was held that where a jury have taken into consideration in awarding compensation one claim among others as to which they have no jurisdiction a *certiorari* will lie, although such excess of jurisdiction does not appear on the face of the proceedings; the excess may be shown by affidavit.

Sufficient ought to appear on the face of the proceedings themselves to show that jurisdiction exists; otherwise they may be void. No particular form is necessary, and it is sufficient if the jurisdiction is made substantially apparent upon the face of the documents upon a reasonable construction, and if the warrant and inquisition be annexed together, any deficiency in the one may be aided by reference to the other (*Taylor v. Clemons* (1842), 2 Q. B. 978; affirmed H. of L. (1844), 11 Cl. & F. 610; and *Ostler v. Cooke* (1849), 13 Q. B. 143).

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Where the sheriff exceeds his jurisdiction and the parties do not make any objection they are not thereby estopped from afterwards objecting to the want of jurisdiction, as it is the duty of the court itself to see whether it has jurisdiction or not (*Caledonian Rail. Co. v. Ogilvy* (1856), 2 Macq. H. L. Cas. 229).

*And varied.*—In that last case the jury had awarded a lump sum for severance and for damage caused by a level crossing. The House of Lords being of opinion that no damages could be rightly claimed for the level crossing set aside the verdict, but had it been possible to sever the amounts the court stated that they would have corrected the verdict. And see also *R. v. Scard* (1894), 10 T. L. R. 545.

*Time to apply.*—In order, however, to succeed on an application for a *certiorari*, proceedings should be taken at once. It is discretionary in the court to grant a *certiorari* or not, and the Divisional Court in one case laid it down as a rule of practice that a *certiorari* ought not to be granted for the purpose of quashing an inquisition taken under the Lands Clauses Acts after the expiration of the time allowed for setting aside an award made under the powers of the same Act (*R. v. Sheppard* (1880), 5 Q. B. D. 179; affirmed on appeal (1880), 9 Q. B. D. 741). As to the time for setting aside an award see O. 64, r. 14, of the Rules of the Supreme Court; and notes to s. 11 of the Arbitration Act, 1889, *post*.

**Enforcing verdict and judgment.**—The ordinary remedy for enforcing a verdict and judgment is by action. After the price is fixed either party can sue for specific performance, and after the conveyance has been executed the landowner can sue for the price. It is subject to the same rules as enforcing an award by action. See cases to s. 36, note "By action," p. 68; and note "Attaching the amount found due," p. 69.

In the earlier cases prior to the Lands Clauses Act, 1845, the inquisition was enforced by *mandamus* (*R. v. Nottingham Old Waterworks Co.* (1837), 6 A. & E. 355; *R. v. Swansea Harbour Trustees* (1839), 8 A. & E. 439; *R. v. Great Western Rail. Co.* (1843), 6 Q. B., p. 72, *n.*), but it has been held that an action lies, and is a not less effectual remedy than a *mandamus*, so that, therefore, a *mandamus* will not now be granted (*R. v. Hull and Selby Rail. Co.* (1844), 6 Q. B. 70).

As the promoters are not precluded by the finding from disputing the claimant's interest in the land, or his legal right to compensation, and that the damage suffered is not in its nature actionable, these pleas can always be raised in the defence to any action on the verdict and judgment (*Read v. Victoria Station and Pimlico Rail. Co.* (1863), 1 H. & C. 826; *Barber v. Nottingham, etc. Railway and Canal Co.* (1864), 15 C. B. (N.S.) 726; and cases cited in note above "Jurisdiction of sheriff and jury," p. 83).

But if the inquisition is good on the face of it, it is no defence to an action on the verdict and judgment that there has been excess of jurisdiction. If there has been such excess of jurisdiction the proper course is to apply for a *certiorari* to have the judgment set aside. When an action is brought on a judgment following an inquisition, the court cannot enter into the consideration of the particular items, as that would be reopening the inquiry (*Mortimer v. South Wales Rail. Co.* (1859), 1 E. & E. 375; *Corrigal v. London and Blackwall Rail. Co.* (1843), 5 M. & Gr. 219, 248).

If the jury have any jurisdiction, and if any evidence is placed before the jury which warrants the finding of any damages, then in an action to recover the amount so found, the plaintiff must recover, however excessive the amount of damages, however erroneous the law laid down to the jury, however wrong the principle they adopted. *Per* Lord HERSCHELL, *Metropolitan Board of Works v. Howard* (1889), 5 T. L. R. 732.

Following these cases it has been decided that if an action is brought to enforce the verdict of a jury for a lump sum, it is no answer to say that the jury had awarded compensation in respect of a matter not a subject of compensation, provided they had awarded also in respect of a matter in regard to which they had jurisdiction (*Long Eaton Recreation Grounds Co. v. Midland Rail. Co.*, [1902] 2 K. B. 574).

Pleas, however, to the effect that the claimant had not followed the regulations laid down by the statute, as to giving notices, or as to stating his interest would be valid (*Healey v. Thames Valley Rail. Co.* (1864), 5 B. & S. 769; *Eastham v. Blackburn Rail. Co.* (1854), 9 Ex. 758), unless waived by the subsequent conduct of the promoters as if, notwithstanding the insufficiency of the notice, they proceed to arbitration (*Lovering v. City of London and Southend Subway Co.* (1891), 7 T. L. R. 600).

*Costs.*—See s. 51, and notes.

**"Shall be kept . . . among the records."**—Under a similar provision in another Act it was stated that the recording of the verdict and judgment as directed is not made a condition precedent to their validity, and that the provision seemed only intended for safe custody and facility of proof (*Chabot v. Lord Morpeth* (1844), 15 Q. B. 446, p. 458).

**"Copies thereof shall be good evidence."**—In a case under a previous Act containing a similar proviso, where it appeared that the verdict had never been recorded as directed, the under sheriff who presided was called as a witness to prove the verdict, and his evidence was received (*Manning v. Eastern Counties Rail. Co.* (1843), 12 M. & W. 237, p. 243).

Like all other public records of a judicial nature, these records may be proved by an examined copy as well as by the certified copy mentioned in the section. An examined copy is a copy sworn to be a true copy by a witness who has compared it line for line with the original, or who has examined the copy while another person read the original.

**51.** On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one half of the cost of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

*Costs of the inquiry, how to be borne.*

Compare a similar provision in the matter of costs of an arbitration, s. 34.

**"On every such inquiry."**—This refers to inquiries pursuant to s. 68 as well as to those where notice of treat has been given (*Richardson v. South Eastern Rail. Co.* (1851), 20 L. J. C. P. 236; (1852), 21 L. J. C. P. 122; *Hayward v. Metropolitan Rail. Co.* (1864), 33 L. J. Q. B. 73).

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It does not, however, include inquiries made under s. 94, which provides for the assessing of the value of small portions of severed land, on the ground that a previous offer of the promoters in such a case would not prevent the inquiry, and no special provision is there made as to costs (*Cobb v. Mid Wales Rail. Co.* (1866), L. R. 1 Q. B. 342).

**"The sum previously offered."**—These words refer to the offer which must be made under s. 38 in cases where the inquiry by a jury takes place as the consequence of a delivery of a notice to treat. That section requires the promoters to give a ten days' notice of their intention to have a jury summoned, and in that notice to state what sum they are willing to give. If they make an offer after that date, such later offer, although the same or greater than the amount found by the jury, will not disentitle the landowner to have his costs paid by the promoters (*Pearson v. Great Northern Rail. Co.* (1869), in note to *Fitzhardinge v. Gloucester and Berkley Canal Co.* (1872), L. R. 7 Q. B. 776, at p. 785, a case under s. 34). If an offer is made in the notice and a larger one made later, and the amount found is greater than the first but less than the second, the landowner will still be entitled to his costs, although the promoters do not issue their warrant to summon a jury until ten days after the second notice (*R. v. Smith, Re Westfield and Metropolitan Rail. Co.* (1883), 12 Q. B. D. 481).

In that case COLERIDGE, L.C.J., stated that he was disposed to think that "if the notice of intention to cause a jury to be summoned, coupled with the offer of the sum the promoters were willing to give, were formally withdrawn and another notice were given not less than ten days before the summoning of the jury, and another offer of a larger sum substituted in that notice, it would be a good offer under section 38, and one upon which the promoters could rely with respect to the question of costs." *S. C.*, p. 487, and *cf. per* BLACKBURN, J., in *Fitzhardinge v. Gloucester and Berkeley Canal Co.* (1872), L. R. 7 Q. B. 776, at p. 782, and see note to s. 34, p. 65.

The offer must be made in the notice that the promoters intend to issue their warrant. If it be made before and not repeated in that notice, this is apparently not a strict compliance with the statute, and although the jury award a less sum than that offered the landowner will, nevertheless, be entitled to his costs of the inquiry (*R. v. Smith, Re Church and London School Board* (1892), 67 L. T. 197).

Section 38 will continue to apply, although the promoters proceed to take possession under s. 85 and give the bond thereby required until they actually take physical possession, and then s. 68 will apply. *S. C.*

**Under s. 68.**—This section extends to inquiries pursuant to s. 68; but, as it has been held that the notice mentioned in s. 38 need not be given before summoning the jury (*Richardson v. South Eastern Rail. Co.* (1851), 20 L. J. C. P. 236; *Railton v. York, Newcastle, and Bersick Rail. Co.* (1850), 15 Q. B. 404; and see cases cited in s. 38, note, "They shall not give less than ten days' notice," p. 73), it became necessary for the courts to fix some date before which the offer referred to in this section must be made. It was finally decided that the limit must be at the date of sending the ten days' notice, which the promoters must give of the date fixed for the inquiry, as provided in s. 46 (*Hayward v. Metropolitan Rail. Co.* (1864), 33 L. J. Q. B. 73; *Metropolitan Rail. Co. v. Turnham* (1863), 14 C. B. (N.S.) 212; *R. v. Smith, Re Church and London School Board* (1892), 67 L. T. 197).

The promoters may, therefore, withdraw their offer, and increase it, or otherwise alter it, up to the time above mentioned (*Hayward v. Metropolitan Rail. Co.*, *supra*).

In cases under s. 68 the claimant is entitled to no costs if he has no proper claim to compensation, and it does not matter whether the promoters

make a previous offer or not (*Todd v. Metropolitan Rail. Co.* (1871), 19 W. R. 720; *Sharpe v. Metropolitan District Rail. Co.* (1879), 4 Q. B. D. 645; (1880), 5 App. Cas. 425. Cf. *Capell v. Great Western Rail. Co.* (1883), 11 Q. B. D. 345).

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"The same or a less sum than shall have been offered."—See cases under same heading in note to s. 34, p. 65.

Neither jury nor arbitrators have power to inquire as to what sum was previously offered (*Gould v. Staffordshire Potteries Waterworks Co.* (1850), 6 Rail. Cas. 568, p. 575).

"All the costs."—As to what is included, see s. 52, *infra*, and note, "The costs"; and see also s. 34, note, "And incident thereto."

*Recovery of the costs.*—As to this, see s. 53 and notes, and also s. 34, note, under same heading, p. 63.

**52.** The costs of any such inquiry shall, in case of difference, be settled by one of the masters of the Court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attornies, recording the verdict and judgment thereon, and otherwise incident to such inquiry. Particulars of the costs.

There is a provision to much the same effect in the Lands Clauses (Taxation of Costs) Act, 1895. The charges of the sheriff in regard to summoning the jury, etc., are now prescribed under the Sheriffs Act, 1887. See scale in note to s. 41, *ante*, p. 77.

**The costs.**—As to how they are to be borne, see s. 51, and as to the promoters deducting the amount from the sum found due, s. 53.

When the verdict is for the same or a less sum than that previously offered, the master will only be required to tax the costs of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment. The promoters are not entitled to half the costs of witnesses and counsel, but only half the formal costs (*Bray v. South Eastern Rail. Co.* (1849), 7 D. & L. Practice Cas. 307).

In a case where the verdict of a jury was quashed by reason of a wrong view of the law being taken by the under-sheriff, in consequence of which a second inquiry had to be held, in which the jury awarded a greater sum than had been offered, it was held that the claimant was entitled to his costs, not only of the successful inquiry, but also of the first one and of the proceedings to set it aside (*R. v. Manley-Smith* (1881), 30 W. R. 272; *S. C. sub nom. R. v. North London Rail. Co.* (1881), 51 L. J. Q. B. 241). But in a case under a local Act prior to the Lands Clauses Act, 1845, where the sheriff having gone wrong, the landowner applied for and obtained a *mandamus* to set aside the inquisition, he was held not to be entitled to the costs of the proceedings to set aside on the ground that it was the mistake of the sheriff and not of the company (*Walker v. London and Blackwall Rail. Co.* (1843), 7 Jur. 1154).

The costs will not include the expenses of preliminary negotiations, of surveying, or of plans by surveyors not called at the inquisition. These questions were decided in cases under special Acts prior to the Lands

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Clauses Acts, but in similar terms. In *R. v. Sheriff of Warwickshire* (1841), 2 Rail. Cas. 661, it was held that sections giving the landowner "the costs of summoning such jury and the expenses of witnesses" did not entitle the claimant to the costs of the attorney's letters, nor attendances, nor to the expenses of surveyors not called as witnesses. Where the words of the statute included the costs "also of the inquest" the owner was held entitled to the attendance of the attorney, conferences, and counsel, but the expenses of surveyors merely as such were not allowed, unless they had been called as witnesses (*R. v. York JJ.* (1834), 1 A. & E. 828).

Where there was no direction in the Act as to costs, none were allowed (*Ex parte Turner* (1838), 1 W. W. & H. 305; *Corrigall v. London and Blackwall Rail. Co.* (1843), 5 M. & G. 219; *R. v. Gardner* (1837), 6 A. & E. 112; and *In re Laura* (1847), 1 Ex. 441—a case under the National Defence Act, 1842 (5 & 6 Vict. c. 94)).

See s. 34 for a proviso similar to that in s. 51 as to costs of an arbitration.

*Reviewing taxation.*—The court has no power to review a taxation by the master under this section. The ground for this decision is that the power to review taxation arises only in proceedings before the court, and because the court has the power of taxing, which office it delegates to the taxing masters. In cases under this section the authority has been conferred on the master as a *persona designata*, and no jurisdiction is given to the court to review (*Owen v. London and North Western Rail. Co.* (1867), L. R. 3 Q. B. 54; approving *Ross v. York, Newcastle, and Berwick Rail. Co.* (1849), 18 L. J. Q. B. 199, and *Tennant v. Borough of Belfast* (1847), 11 Ir. L. R. 290, but not following *Metropolitan Rail. Co. v. Turnham* (1863), 32 L. J. M. C. 249; and *Re Sheffield Waterworks Act* (1865), L. R. 1 Ex. 54).

The principle laid down in *Owen's Case* was approved by the Court of Appeal in *Sandback Trustees v. North Staffordshire Rail. Co.* (1877), 3 Q. B. D. 1, a case under s. 1 of the Lands Clauses Consolidation Act, 1869.

If the master refuse to exercise jurisdiction, or wrongfully exercise his jurisdiction, the court can interfere by *mandamus* or *certiorari* (*Owen's Case, supra*, and cases cited to s. 1 of the Lands Clauses (Taxation of Costs) Act, 1895, *post*, and *R. v. Smith* (1892), 67 L. T. 197; *R. v. Manley Smith* (1881), 30 W. R. 272).

Costs may also be taxed under s. 83 of the Lands Clauses Act, 1845, but in that case the taxation can be reviewed, as the taxation thereunder can only be done by order of court.

**Payment of costs.**

**53.** If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or of any interest therein, the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall

be recoverable by distress, and on application to any justice he shall issue his warrant accordingly. **Sect. 58.**

**"Any such costs."**—These, no doubt, refer to the costs mentioned in s. 51, 52. There is no similar provision as regards recovering the costs of an arbitration.

**"Any justice."**—This means any justice as defined by s. 3; see note thereto, "Justices," p. 7.

A justice acting under this section will probably be deemed for this purpose a court of summary jurisdiction within the definition in the Interpretation Act, 1889, s. 13 (11). See s. 24, note, p. 52. If so, the provisions in the Summary Jurisdiction Acts dealing with warrants of distress will, so far as they are applicable, apply to distress warrants under this section. The more important are—s. 39 (4) and s. 43 (1), (8) of the Summary Jurisdiction Act, 1879, dealing respectively with illegal execution and the procedure in executing distress warrants.

**"Shall issue his warrant."**—The allocation of the master is final as to the costs, and the justice has no discretion. As soon as the master's allocation has been proved and that demand has been made, and that the costs have not been paid within seven days of the demand, he is bound to issue his warrant (*Metropolitan Rail. Co. v. Turnham* (1863), 14 C. B. (N.S.) 212, 222).

It would seem, therefore, to follow that if there is any question of the claimant's right to his costs that the objection should be taken before the master, and if he thereupon refuse to tax, the question can be raised by *mandamus*. Section 52, note "Reviewing taxation," and s. 1 of the Lands Clauses (Taxation of Costs) Act, 1895, and notes. #

**"By the valuation of a surveyor."**—This appears to refer to the cases provided for in s. 58.

**Recovering costs otherwise.**—The costs may also be recovered in an action to recover the amount assessed (*South Eastern Rail. Co. v. Richardson* (1852), 21 L. J. C. P. 122; and *cf. Todd v. Metropolitan District Rail. Co.* (1871), 24 L. T. 435). In neither of these cases was the question raised that the court had not jurisdiction to give judgment for the costs, inasmuch as a method of recovery was provided by statute.

A *mandamus* apparently will not lie to compel the company to pay the costs. *Cf. R. v. Hull and Selby Rail. Co.* (1844), 6 Q. B. 70; *R. v. London and Blackwall Rail. Co.* (1845), 4 Rail. Cas. 119.

In the last-mentioned case, which was under a local Act prior to the Lands Clauses Consolidation Acts, but with a similiar provision as to costs of assessment before a jury, the proper procedure was held to be: to have the costs ascertained, to make a formal demand for them, and, if refused, to proceed by distress. PATTERSON, J., there said: "If after the costs were ascertained you could not levy by distress or otherwise, perhaps a *mandamus* might be granted to assist you" (S. C., p. 125).

If, however, an action will lie for the costs a *mandamus* would not be granted, as an action would prove an equally effectual remedy (*R. v. Hull and Selby Rail. Co.* (1844), 6 Q. B. 70; *R. v. Lambourn Valley Rail. Co.* (1888), 22 Q. B. D. 463; and see note "*Mandamus*" to s. 21, p. 47).

See s. 34, note "Recovery of costs," in cases where the assessment has been by arbitration, p. 66.

**54.** If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such Special jury to be summoned at the

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request of  
either party.

question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attornies, at some convenient time and place appointed by him, for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts, and the sheriff shall appoint a day, not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts.

**"Any such question"** refers to the questions of disputed compensation arising under ss. 21 and 68. See s. 38, note **"Any case of disputed compensation."**

**"Before they have issued their warrant."**—As by s. 38 they must give ten days' notice of their intention to issue their warrant, the owner has that period within which to give his notice of desire for a special jury.

In cases under s. 68, as no such notice of issuing their warrant is required to be given by the promoters, the claimant who desires a special jury should state such desire in his notice that he desires his claim settled by jury as therein provided, but he may do so later. As the promoters under s. 68 must summon the jury within twenty-one days, he should give his notice for a special jury within such time as will enable them to summon a special jury within the twenty-one days from the first notice mentioned in s. 68 within which they must issue their warrant. The delivery of a notice for a special jury under this section does not, however, extend such period beyond the twenty-one days (*Glyn v. Abergare Valley Rail. Co.* (1859), 28 L. J. C. P. 271).

**"Sheriff."**—See definition, ss. 3 and 40.

**Special jurors.**—See 6 Geo. 4, c. 50, and 33 & 34 Vict. c. 77. By s. 17 of the latter Act (the Juries Act, 1870), the method of nominating and reducing special juries in the High Courts in London and Middlesex was abolished unless any judge order to the contrary. A simpler method was provided by s. 16; but the Act does not extend to the sheriff's court when sitting as a compensation court, and the method provided by s. 54 still prevails.

An inquisition before the sheriff is not rendered void by an omission to strike the special jury on such a date as not to allow three days after such striking for summoning the special jury, it being an irregularity only (*Ex parte Great Western Rail. Co.* (1851), 18 L. T. (o.s.) 92).

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**55.** The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the court, or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury; and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

Deficiency of special jurymen.

**"Their lawful challenges."**—See note under same heading to s. 42, p. 79.

**"With the like incidents."**—As to these, see ss. 43—53.

**"If a full jury do not appear."**—If the full number do not appear, the assessment may be properly made by those who do appear unless either party applies to have the full number made up (*cf. Ex parte Great Western Rail. Co.* (1851), 18 L. T. (o.s.) 92).

**56.** Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Other inquiries before same special jury by consent.

**"Struck and reduced."**—That is provided for in s. 54, for cases arising under ss. 21, 23, 68.

As to the jurisdiction without such consent of the parties, see s. 50, note "Jurisdiction of sheriff and jury."

**57.** No juryman shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

Jurymen not to attend more than once a year.

Possibly this would not prevent the sheriff adding such a juryman to a jury, if a full jury did not appear, and he was then attending in court. See ss. 42, 55.

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Compensation  
to absent  
parties to be  
determined  
by a surveyor  
appointed by  
two justices.

**58.** The purchase money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose as hereinafter mentioned.

1. "**By reason of absence is prevented from treating.**"—This does not, of course, imply that a person abroad may not treat, by agents or otherwise.

A person abroad who is so prevented may have the surveyor's valuation submitted to arbitration (s. 64), and the amount of the surveyor's valuation, if over £20, must be paid into the bank (ss. 69, 71).

2. "**Or cannot after diligent inquiry be found.**"—This section does not apply to a case where there is a doubt as to the true ownership of the land, when both claimants thereto can be found. In such a case the value should be assessed by a jury, or by arbitration. If the wrong course has been taken, the money paid into the bank will not be paid out till the value has been ascertained in the proper manner, and paid into court (*Ex parte London and South Western Rail. Co.* (1869), 38 L. J. Ch. 527).

The owner when found can have the surveyor's valuation submitted to arbitration (s. 64), and the amount of the surveyor's valuation, if over £20, should be paid into court (ss. 69, 71).

Section 18 provides that a notice to treat shall be given to all persons who have an interest in the land as shall after diligent inquiry be known to the promoters. If the party after diligent inquiry cannot be found, or is out of the United Kingdom, the notice must be left with the occupier or affixed upon some conspicuous part as provided by s. 19, p. 44.

3. "**Who shall not appear.**"—The claimant is entitled to ten days' notice of the time and place of inquiry (s. 46, p. 81). If he does not appear, the inquiry is not proceeded with (s. 47, p. 82) and the valuation as ascertained by the surveyor will be final as to the amount, and cannot afterwards be submitted to arbitration, as in the other two cases dealt with in this section (s. 64).

"**As two justices shall nominate,**" *i.e.*, in the manner provided by s. 59. As to justices, see definition, s. 3, p. 5.

Two justices  
to nominate  
a surveyor.

**59.** Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the Kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid,

and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing, subscribed by him, of the correctness thereof.

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"Two justices" includes a stipendiary. See s. 3, definition "Justices," and note, p. 7.

"Upon such proof," *i.e.*, of the same facts, as referred to in s. 58.

"Nominate an able and practical surveyor."—When the promoters take possession of land prior to the amount being assessed, they must pay into the bank the amount claimed, or the amount ascertained by a surveyor to be appointed in the manner provided by this section. Section 85.

In respect of the value of commons where no committee is appointed to treat with the promoters, a surveyor appointed in the manner provided in this section must fix the amount. Section 106.

In a case under s. 85, the appointment by the justices of the surveyor employed by the company, and who had already valued the land for them, was not considered in itself sufficient to invalidate the bond given (*Langham v. Great Northern Rail. Co.* (1848), 1 De G. & Sm. 486, 498, 499).

In a case under the same section it was held that it was not necessary that the appointment of the surveyor should specify the particular lands to be valued, because the party, at whose instance the surveyor is appointed, is interested in seeing that the valuation is made of the right lands (*Poynder v. Great Northern Rail. Co.* (1847), 16 Sim. 3).

"Shall annex to his valuation a declaration."—The declaration here referred to does not appear to be the same as the one mentioned in s. 60, which he is required to make in the presence of a justice before entering upon the duty. The declaration here referred to does not, apparently, require to be made before a justice.

The surveyor may make his valuation in any manner as will enable him to do it fairly, and the court will not disturb it; but it is not enough that he should merely inspect the exterior of a building, he must also inspect the interior (*Cotter v. Metropolitan Rail. Co.* (1864), 10 L. T. (N.S.) 777, a case under s. 85, *post*).

60. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices, or one of them, made and subscribe the declaration following at the foot of such nomination; (that is to say,)

"I, A. B., do solemnly and sincerely declare, that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

A. B.

"Made and subscribed in the presence of ."

And if any surveyor shall corruptly make such declaration, or having made such declaration shall willfully act contrary thereto, he shall be guilty of a misdemeanor.

A similar declaration must be made by arbitrators and umpires before entering upon their duty. Section 33 and note p. 62.

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This declaration must be made before one of the justices appointing, who would, therefore, be one of the justices for the county, division, or borough. See s. 3, definition, p. 5.

This declaration must apparently be annexed as well as the one made after valuation referred to in s. 59. See s. 61.

Valuation, etc. to be produced to the owner of the lands on demand.

**61.** The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

**"The said nomination and declaration."**—The nomination is that by the justices under s. 59. The "declaration" probably refers to the declaration under s. 60, so that it is necessary that both the declaration before entering on the valuation (s. 59) and the one after should be annexed.

Expenses to be borne by promoters.

**62.** All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

In the case where the claimant does not appear at the inquiry before a jury, the inquiry is not proceeded with. In such a case, it is not clear whether the promoters would be required to pay the cost impanelling the jury under this section, or whether the claimant would be required to pay the half of such costs under s. 51.

Purchase money and compensation, how to be estimated.

**63.** In estimating the purchase money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the ~~seizing~~ <sup>taking</sup> of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

Substantially the same provision is made as to juries by s. 49. By that section, juries are directed to assess the amounts under these heads separately. Although there is no such provision in this case, arbitrators and justices would, no doubt, state the items separately, if desired, and in the event of any legal question arising as to the right to compensation they could be required to state a special case for the purpose of deciding it.

**"In any of the cases aforesaid."**—As to these, see s. 21 and note. "Shall be settled in the manner hereinafter provided," p. 46.

**Compensation for land to be purchased.**—With the exception, perhaps, of yearly tenants and those having a less interest (s. 121), every person who has an interest in land which promoters are authorised and require to

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take for the purposes of the undertaking is entitled to a notice to treat for his interest (s. 18), and is entitled to have the value thereof assessed in the manner provided by the Lands Clauses Acts (s. 23). When the promoters have taken possession before purchase in accordance with the provisions in s. 85, each person who has an interest in the land is likewise entitled to have his interest assessed in the same manner (s. 68). Persons whose lands are injuriously affected by the execution of the works, although no part of their land is taken, are also entitled to compensation (s. 68). The principles of compensation in this last case are dealt with in the notes to s. 68. Here, it is proposed to deal with the principles for ascertaining the amount of the purchase money for land to be purchased. The same measure of compensation exists whether the method of assessment adopted is that by arbitrator, justices, surveyors, or juries (ss. 49, 63).

Although this section directs that regard shall be had to different matters, it is important to notice that the thing to be ascertained is strictly the price to be paid for the land. These matters are merely items to be taken into account in ascertaining the purchase money or compensation in respect of lands taken or to be taken (*cf. Commissioners of Inland Revenue v. Glasgow and South Western Rail. Co.* (1887), 12 App. Cas. 315).

It should be noticed also that there is no provision either in this or in any other section of this Act to the effect that anything is to be added in respect of compulsory purchase. In practice a percentage is regularly added to the market price, and this is usually right, for the sum to be ascertained is not the market price but the value of the land to the owner. In some Acts it is provided that the owner shall only receive the market price. See, for example, s. 21 of the Housing of the Working Classes Act, 1890, *post*. In the s. 9 (10) of the Local Government Act, 1894, there is a provision that no additional allowance shall be made for compulsory purchase. The point as to whether any percentage should be added was raised but not decided in *Jerris v. Newcastle and Gateshead Water Co.* (1897), 13 T. L. R. 14, 312.

It is proposed to deal with the subject under these heads :

1. The value of the land to be purchased.
2. The damage by reason of severance of the lands taken from those of the same owner which are not taken.
3. The damage caused by otherwise injuriously affecting lands not taken which were held with those taken.

**I. The value of the land to be purchased.**—The fundamental principle in assessing compensation is to discover what the person will lose by having his land or his interest in it taken from him. It is the value of the land to the owner that is the subject of compensation, not merely its market value, nor its value to the promoters taking it, but its value to him. His interest may be subject to restrictions which lessen that value, or it may be held together with rights which are beneficial, or other advantages which enhance the value to him. It is the value of the land, with all its potentialities, and with all the actual use of it by the person who holds it, that is to be considered in assessing the compensation.

**Burial grounds.**—The principle that the compensation to be paid to the owner was the value to him, as distinguished from the value of the land to the promoters, was laid down in connection with disused burial grounds. Thus, it was held that the rector of a parish, who, as such, has a freehold interest in the burial fees in the churchyard, is only entitled to be compensated for the loss of his interest therein as a burial ground, and if it has been closed for burial and promoters are authorised to take possession of it, they are not bound to pay for it on the basis of its value to them nor as land which has been secularized by the Act, but as lands consecrated and devoted to the purposes of a parish burial ground (*Stebbing v. Metropolitan Board of Works* (1870), L. R. 6 Q. B. 37; *cf. Manmatha Nath Mitter v. Secretary of*

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It has been doubted, however, whether the principle was properly applied in *Stebbing's Case*, inasmuch as the rector not only has a personal interest in a disused burial ground, but he is also trustee for the parish, and the land may be of value to the parishioners, if merely as an open space, apart from any pecuniary profit it may yield. Disused burial grounds may also be used for other spiritual and quasi-secular purposes on the grant of a faculty, and they can also be used for widening a highway (*In re Parish of Bideford*, [1900] P. 314). The rector, therefore, would be entitled to claim compensation for the fee, the amount being paid into court (*Campbell v. Mayor of Liverpool* (1870), L. R. 9 Eq. 579).

In *Hilcoat v. Archbishop of Canterbury* (1850), 19 L. J. C. P. 376, a case which was not followed in *Stebbing v. Metropolitan Board of Works*, *supra*, WILDE, C.J., in delivering the judgment of the court said: "By the appropriation of property to ecclesiastical or spiritual purposes, the owner voluntarily sacrifices the pecuniary value of the property so appropriated, but he makes that sacrifice to obtain an object which he estimates of greater value; but when that object is entirely withdrawn from him by the application of the property against his will to secular uses, and those uses connected with pecuniary profit, it does not seem consistent with justice, to estimate the value to the owner upon the footing of its irrevocable appropriation to those spiritual purposes from which it has been already withdrawn." In the case of *In re City and South London Rail. Co. and St. Mary Woolnoth*, *infra*, VAUGHAN WILLIAMS, L.J., expressed the opinion that in so far as *Stebbing's Case* was inconsistent with the above view of WILDE, C.J., he preferred that view.

Promoters usually offer a substantial amount; but it would appear to be advisable when these grounds are to be taken that a clause be inserted in the Act of Parliament as to the basis of compensation. See *Stebbing v. Metropolitan Board of Works* (1870), L. R. 6 Q. B. 37, p. 42; see further the note to s. 70 "Of the party who would have been entitled to the rents and profits."

Where a railway company had taken land underneath a church an arbitrator in an award stated as a special case, awarded £90,000 on the basis that the land could never be used for any other purpose than that of a church, and £136,000 on the basis that by means of a scheme under the Union of Benefices Act, 1860 (23 & 24 Vict. c. 142), the land might be available for building purposes. It was held that the effect of the Union of Benefices Act, 1860, was to enable the land to be used for building purposes, and that therefore the compensation should be assessed on that basis (*In re City and South London Rail. Co. and the Rector and Churchwardens of St. Mary Woolnoth and St. Mary Woolchurch Haw* (1903), 19 T. L. R. 363).

As to what buildings may be erected on a disused burial ground, see the Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72). Section 5 of that Act provides that it shall not extend to any burial ground sold under the authority of an Act of Parliament, and this applies to sales made after the Act. See *In re Ecclesiastical Commissioners and New City of London Brewery Co.'s Contract*, [1895] 1 Ch. 702; *Attorney-General v. London Parochial Charities*, [1896] 1 Ch. 541; *Trustees of St. Saviour's Rectory v. Oyler* (1886), 31 Ch. D. 412.

*Rights under a will.*—In a case where a testator bequeathed certain leasehold premises to trustees in trust to allow his sons to occupy them at a reduced rent as long as they, or the survivor, carried on business therein, it was held that in assessing the value pursuant to notices to treat that the valuation ought to be made as at the time when the house was about to be taken, and should be made of the exact interest which the parties would have had at the moment the notice to treat was given, assuming that the house had not been taken. The son's interest would be valued according to

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their right of occupancy at a reduced rent, less a depreciation from the fact that it might be determined by a variety of incidents, and the trustees' interest on the chance of their having to submit to a reduced rent in consequence of the business being carried on by the sons (*Penny v. Penny* (1867), L. R. 5 Eq. 227).

*Land used for public park.*—The principles on which compensation for such land should be assessed are discussed in an award by Lord SHAND in *In re the Corporation of Edinburgh and North British Rail. Co.* (1892), part of which is set out in the Appendix. In a case where land was let to a corporation for a public park at a low rent, the lease containing a proviso that in case any part of the land should be compulsorily taken under the powers of any Act of Parliament the lessor might enter, and part was taken compulsorily by a railway company, the lessor was held entitled to the commercial value of the land taken as freed from the lease, and not merely to the capitalised value of the rent paid by the corporation (*In re Morgan and the London and North Western Rail. Co.*, [1896] 2 Q. B. 469).

*Statutory rights of public body.*—In assessing the value of land taken from a public body in whom it is vested with special statutory rights, these rights are a subject of compensation, and the value of the land to the promoters may require to be taken into account in assessing the amount.

Thus, where a public body have vested in it the bed and foreshore of a river for public purposes with power to grant licences to persons to make docks, piers, wharves, and other erections, and to charge for the same such sum as in the opinion of a competent person shall be deemed to be the true and fair value thereof to the person obtaining such licence; and a railway company were authorised to take part of the said foreshore for the purpose of erecting a wharf or landing stage, it was held that an arbitrator, in assessing the amount to be paid under the Lands Clauses Acts, was bound to consider the valuable rights which the owners possessed immediately before the passing of the company's special Act in granting licences and in considering the value of those rights was bound to have borne in mind, *inter alia*, that the railway company, who already had their railway by the margin of this foreshore, would probably or possibly want this foreshore, and would have to pay for it accordingly a sum fixed on the basis of its value to them (*Conservators of River Thames v. London, Tilbury, and Southend Rail. Co.* (1892), 68 L. T. (N.S.) 21).

In another case the promoters were empowered by the special Act to build a bridge over the river, but only after their plans had received the approval of the same conservators. This approval was granted, and it was afterwards contended that it prevented the conservators from claiming compensation for the land taken; but the court held that they were entitled to such compensation (*Conservators of River Thames v. Victoria Station and Pimlico Rail. Co.* (1868), L. R. 4 C. P. 59).

A railway company had leased land from an owner and made their railway on it, and had expended large sums of money in so doing, and at the expiry of the lease had continued as yearly tenants at the same rent. They then, under an Act of Parliament, served notice to treat upon their lessor for the land. The arbitrator based his award on the amount of the rent paid by the company. It was held that he had acted properly in so doing (*Eldon v. North Eastern Rail. Co.* (1899), 80 L. T. 723; and see *In re Athlone Rifle Range* [1902], 1 I. B. 433, where the same principle was applied to land held on lease by the Crown, the reversion of which was taken by the Crown).

*Public-houses.*—On the same principle that it is the value to the owner that is to be paid for, if promoters take land to which a covenant beneficial to the lessor is annexed in actual enjoyment as in the case of a tied public-house, the lessor is entitled to be compensated for the loss of the right arising from that covenant (*Bourne v. Mayor of Liverpool* (1863), 33 L. J. Q. B. 15).

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The same principle is applicable in the case of tied houses taken under Part I. of the Housing of the Working Classes Act, 1890 (*In re Chandlers Wiltshire Brewery Co. and the London County Council*, [1903] 1 K. B. 569).

And arbitrators, in assessing the value of the lessor's reversion in a public-house, ought to take into account that it is a licensed house and determine its reversionary value as such, and not merely as a house and shop (*Belton v. London County Council* (1893), 68 L. T. 411; and in the case of a tied house, see *In re London County Council and City of London Brewery Co.*, [1898] 1 Q. B. 387).

Section 14 of the Alehouse Act, 1828 (9 Geo. 4. c. 61), enables justices to grant licenses to licensed persons to sell intoxicating liquors in some other fit and convenient house if the house for which they are licensed has been, or is about to be, "pulled down or occupied under the provisions of any Act for the improvement of highways or for any other public purpose." The application in such a case must be made by the licensed person who was keeping the old premises as an inn, alehouse, or victualling house at the time of the demolition (*R. v. West Riding of Yorkshire JJ., Ex parte Shaw*, [1898] 1 Q. B. 503); and the new premises must be built and in existence (*James and Surrey Commercial Dock Co. v. Newington JJ.* (1900), 64 J. P. 489). The expression "for any other public purpose" would evidently extend to nearly all undertakings carried out under Act of Parliament, as, for example, if taken for a dock (*S. C.*). The improvements must, however, be under an Act of Parliament, and it is not enough that the site of the premises is to be used for making a street (*R. v. Northumberland JJ.* (1879), 43 J. P. 271). The justices are not bound to license the new premises, but have a general discretion. Thus, they can refuse the transfer on the ground that there are already sufficient houses in the locality (*Boodle v. Birmingham JJ.* (1881), 45 J. P. 635). If an indoor licensed beerhouse, licensed before 1869, is pulled down under compulsory powers, and the licensee applies for a grant of a corresponding license to sell beer on other premises, the justices have also a general discretion under s. 14 of the Licensing Act, 1828, to refuse the application, and are not confined to the four grounds of refusal mentioned in s. 8 of the Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27) (*Trayner v. Jones and Others*, [1894] 1 Q. B. 83).

**Rights under covenants.**—Where land is taken from a lessee by promoters, he is thereby released from his onerous covenants (*Slipper v. Tottenham and Hampstead Rail. Co.* (1867), L. R. 4 Eq. 112; *Baily v. De Crespigny* (1869), L. R. 4 Q. B. 180); but if the landlord thereby suffers he would have a right of compensation in respect thereof against the promoters. As to compensation for breach of covenants by reason of acts done on the land taken, see note to s. 68, *post*, p. 126.

**Renewal of lease.**—If a lessee has a right of renewal of his lease, this right is also a subject of compensation (*Bogg v. Midland Rail. Co.* (1867), L. R. 4 Eq. 310). But if the lessee has no such right, but merely a probability or expectancy that the lease will be renewed, this probability or expectancy is not a matter of compensation (*Ex parte Nadin* (1848), 17 L. J. Ch. 421). And even if the lessee has laid out money on the land on the reasonable expectation of a renewal he will not be allowed compensation in respect thereof (*R. v. Liverpool and Manchester Rail. Co.* (1836), 4 A. & E. 650). Under the wide terms used in the Hungerford Market Act, compensation was allowed for the expectancy of a renewal (*Ex parte Farlor* (1831), 2 B. & Ad. 341; *R. v. Hungerford Market Co.* (1839), 9 A. & E. 463).

**Equitable interests.**—Equitable interests are the subject of compensation as well as legal interests. As to the persons entitled to compensation in respect thereof, see s. 18, note, "To all the parties interested," *ante*, p. 38. If, however, the promoters acquire the land from a person entitled to sell the legal estate, as, for example, a trustee, it is not necessary to acquire the rights of beneficiaries.

*Mines and minerals.*—As to these see ss. 77—85 of the Railways Clauses Act, 1845, and ss. 18—27 of the Waterworks Clauses Act, 1847, *post*.

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*Goodwill and loss of profits.*—It is under the principle that it is the owner's interest in the land which is to be assessed, that compensation is allowed for loss of goodwill, and to some extent for loss of profits. Goodwill is a word used somewhat loosely in popular language, and in its technical legal meaning it is confined mainly to certain rights which pass on the sale of a business. In cases of compensation it must be regarded in its widest sense, not as a subject of sale, but as a property in the hands of a person who desires to keep it. In this sense goodwill means the probability that persons who have previously dealt with a person will continue to do so. When, therefore, promoters take a man's business premises he is entitled to compensation, if by reason of their being so taken that probability is reduced; if, for example, the only new premises he can acquire are less convenient for his customers. In *Bidder v. North Staffordshire Rail. Co.* (1878), 4 Q. B. D. 412, 432, BRAMWELL, L.J., indicated the subject of compensation in a case of this kind: "It is as though a house in a street were taken where a man carried on business, and there were other houses in the same street to be had, to which the business could be transferred with no loss of goodwill. In such a case no compensation for goodwill ought to be given. If the rent were greater, that ought to be compensated for; if the lease were shorter, that ought; and if other circumstances of loss or precariousness, they ought."

Even, however, if adjacent premises are obtained, a jury may rightly take into consideration a probable loss of business (*R. v. Scard* (1894), 10 T. L. R. 545).

In a case where a man had carried on an old-established business of boot and shoe making in a house of which the lease was about to expire, and he had purchased the adjoining house for the purpose of moving into it and carrying on his business there, and promoters required the house thus purchased, it was held that the arbitrator had rightly heard evidence as to the profits made in the first house, and upon that basis awarded a sum of £1,000 in respect of the profits he might have made at the house to be taken (*White v. Commissioners of Public Works* (1870), 22 L. T. 591).

If there is what is called local goodwill, *i.e.*, "the chance that the old customers will resort to the old place" (*per* Lord ELDON, in *Crittwell v. Lye* (1810), 17 Ves. 335), such local goodwill would clearly be an interest of value to the owner, and a subject of compensation if the place were taken; but a personal goodwill which might not be the subject of sale, except with various covenants attached, may, nevertheless, be injured, inasmuch as the loss of the premises might prevent certain of the old customers resorting to the same person. Compensation has been allowed to a tailor under this heading (*Cooper v. Metropolitan Board of Works* (1883), 25 Ch. D. 472), and to a solicitor (*R. v. Scard* (1894), 10 T. L. R. 545).

Loss of profits may arise partly from loss of local connection and partly from inability to carry on the business so profitably during the removal. This latter class of damage is treated, *infra*, under heading "Damages for expulsion."

Loss of profits may also be due to the fact that the premises taken were in a position which attracted the attention of passers by, and that in consequence chance customers were numerous, and equally commanding premises could not be obtained; this would also be a subject of compensation as well as the loss of goodwill.

Usually those items, loss of profits and goodwill, local and personal, are not kept distinct, but a lump sum is found in respect of them, and unless questions arise as to how such compensation is to be divided, as between the occupier and other persons, as, for example, mortgagees or lessors, it is not necessary that awards or verdicts should state them more clearly. See *Cooper v. Metropolitan Board of Works* (1883), 25 Ch. D. 472, and *Cooper v. North London Rail. Co.* (1865), 34 L. J. Ch. 375.

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It is important to notice that, although compensation is allowed for loss of goodwill and for loss of profits, it is merely because such goodwill or such possibility of profit enhances the value of the premises to the owner. It is the value of the premises to the owner that is to be ascertained, and that is the price to be paid; from which it follows that any sum given for loss of business is part of the consideration for the sale, and on a conveyance an "ad valorem" duty on that amount must be paid pursuant to the Stamp Act (*Commissioners of Inland Revenue v. Glasgow and South Western Rail. Co.* (1887), 12 App. Cas. 315). And as to stamp on sale of a statutory undertaking, see *Attorney-General v. Corporation of Eastbourne* (1901), 66 J.P. 36.

*Potential or prospective value of lands.*—If the land from its situation or otherwise may probably become valuable, as if it be agricultural land near a town which may have a value for prospective building, this probability should be taken into account (*R. v. Brown* (1867), L. R. 2 Q. B. 630). So also, if the proximity of the land to a reservoir may make the land valuable for the purpose of erecting mills, this factor should also be taken into account (*Ripley v. Great Northern Rail. Co.* (1875), 10 Ch. App. 435). And see *R. v. JJ. of West Riding of Yorkshire* (1834), 1 A. & E. 563.

If money has been spent upon land for the purpose of developing it, the price paid and the money so spent are not conclusive evidence as to the value of the land; it is only evidence to be taken into consideration in ascertaining the value, and may be regarded or disregarded (*Streatham Estate Co. v. Commissioners of Public Works* (1888), 52 J. P. 615).

In a case where a railway company had taken land which had been recently purchased for the purpose of erecting a school, and there was no other suitable land in the neighbourhood, it was held that the intention of the claimant to use the land for the particular purpose would be taken into account by the arbitrator in assessing the value of the compensation, although the school had not been built (*Bailey v. Isle of Thanet Light Railways*, [1900] 1 Q. B. 722).

The special adaptability of land for a particular purpose may be taken into account, even where that purpose is the purpose for which the land is taken, and even although it is not used, nor at the time intended to be used, for that purpose, provided that its adaptability is such as to render it available for sale to other persons than the promoters (*Re Arbitration between Countess Ossalinsky and Corporation of Manchester*, reported in the Appendix, *post*). And it is not necessary for the claimant to show that at any given moment there are people who could compete for it, if by reason of the situation of the land there are what may be called natural customers for it (*In re Gough and Aspatria, Silloth and District Joint Water Board*, [1903] 1 K. B. 574). And see note to s. 6 of the Waterworks Clauses Act, 1847, *post*.

In a case before the Privy Council, as to the compensation to be paid for minerals under the surface of land which was taken, it was said that, because a seam is not at the time of taking workable at a profit, it does not follow that no compensation is to be given for it if it is likely to prove profitable in the future (*Brown v. Commissioner for Railways* (1890), 15 App. Cas. 240).

So, in assessing the value of the minerals to be left unworked, the future possibility of rise in price should be taken into account, and if a rise in fact takes place between the date of the service of the notice requiring the minerals to be left unworked, and the date of the arbitration, which rise was wholly unexpected, and could not have been estimated at the date of the notice, the arbitrator may take that fact into account in assessing the compensation (*In re Birlfa and Merthyr Dare Steam Collieries* (1891), *Limited*, and the *Pontypridd Waterworks Co.*, [1903] A. C. 426).

*Damages for expulsion.*—Besides the loss of the property itself, there is not unusually a loss to the owner occasioned by his being turned out of his land or premises. Such loss is a subject of compensation, and includes loss of profit, costs of removal, loss of fixtures, and the like.

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Thus, in a case where a brewhouse was taken by a company, and the jury awarded a sum as compensation for the damage which the owner would suffer by reason of his having to give up his premises as a brewer from the date thereof until he could obtain suitable premises in which to carry on his business, they were held entitled to do so (*Jubb v. Hull Dock Co.* (1846), 9 Q. B. 443).

The principle of compensation for expulsion is the same as in trespass (per ERLE, C.J. : *Ricket v. Metropolitan Rail. Co.* (1865), 34 L. J. Q. B. 257, p. 261).

Fixtures are required to be taken by promoters who take premises, even although they are trade fixtures, but if they are removed they will be required to pay only the loss occasioned by their being less valuable after removal (*Gibson v. Hammersmith Rail. Co.* (1863), 32 L. J. Ch. 337).

Where promoters gave a tenant from year to year notice requiring him to give up possession in six months, but before the expiration of the six months he was told that they did not intend to take possession, he was, nevertheless, held entitled to compensation for any *bona fide* preparations for leaving the premises (*R. v. Commissioners of Rochdale* (1856), 2 Jur. (n.s.) 461).

Similarly, where promoters had given a six months' notice under a local Act to a yearly tenant requiring possession in six months, but they did not, in fact, take possession for nearly two years, and then, having obtained the reversion, demanded possession, it was held that the tenant was entitled to compensation at least for the difference between the position of a mere tenant at sufferance and the position of a tenant with a right to retain possession for a fixed and definite period (*Cranwell v. Mayor of London* (1870), L. R. 5 Ex. 284).

Where a similar notice was given, but possession was not taken for two years, the tenant claimed a loss of profits on his business during these two years by reason of the houses in the neighbourhood being pulled down by the promoters, this was held not to be a valid subject of compensation (*R. v. Vaughan* (1868), L. R. 4 Q. B. 190).

Where under a special Act promoters were required to give six months' notice of their intention to take property, and in consequence of such a notice being given to the tenants of certain premises, these tenants took other premises in which to carry on their business and removed thereto, and the promoters took no steps towards obtaining possession of the premises with respect to which they had given notice, it was held that the tenants were entitled to a *mandamus* to compel the promoters to take the premises and to substantial damages for the additional rent, and such other damages as they had suffered (*Morgan v. Metropolitan Rail. Co.* (1868), L. R. 4 C. P. 97).

In a case where a person held premises under a void lease, because granted by the executors instead of by the heir of a last surviving trustee, he was held to be entitled, on the premises being taken, to a sum for loss of profits and part of the value of the leasehold premises, because the occupant had increased the pecuniary value by expenditure upon the premises (*Ex parte Cooper, In re North London Rail. Co.* (1865), 34 L. J. Ch. 373).

The damages, however, must not be too remote, and it was held in an Irish case, that a landowner could not recover compensation in respect of arrears of rent due to him, which the taking of the land rendered impossible to recover (*In re Kilnorth Rifle Range*, [1899] 2 I. R. 305).

As to the jurisdiction of arbitrators and jury, see s. 23, note, "The same shall be so settled," *ante*, p. 83, and s. 50, note, "Jurisdiction of sheriff and jury," *ante*, p. 50.

**Reinstatement.**—In certain cases where the land and premises are used for a particular purpose, as, for example, a school or a church, and where it is necessary to have another site in the vicinity, the legislature have provided that the compensation shall be awarded on the principle of reinstatement,

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by which is meant that the amount of compensation to be awarded shall be assessed according to the cost of acquiring an equally convenient site and erecting equally convenient premises. For an example of this, see *London School Board v. South Eastern Rail. Co.* (1887), 3 T. L. R. 710.

This subject will be found discussed by Lord SHAND in an award in *Corporation of Edinburgh v. North British Rail. Co.*, which is set out in Appendix, *post*. It was also discussed in an unreported case of *Burroic v. Metropolitan and Metropolitan District Rail. Co.'s*. The principal parts of the judgments in that case will be found in "Problems in the Law of Compensation," by Mr. F. Balfour Browne, pp. 87—95. See also *Gubbins v. London and Blackheath Rail. Co.*, also reported at p. 95 of the same work.

In the London County Council (Improvement) Act, 1899 (62 & 63 Vict. cap. cclxvi), are special clauses for reinstating an electric supply company: the effect of one of these clauses was discussed in *London County Council v. Metropolitan Electric Supply Co., Limited*, Times Newspaper, April 26th, 1901, affirmed H. of L., Times, March 16th, 1902.

**II. Damage by reason of severance of the lands taken from those held therewith.**—In order that damages may arise from severance, it is not necessary that the land should be held under the same title for the same estate, or for the same purpose, or that the lands should be contiguous. It is enough if both parcels of land are held by one and the same owner, and if the unity of ownership conduces to the advantage or protection of the property as one holding. That is a question of fact dependent upon the circumstances of each case. If the several pieces of land owned by the same person are so near to each other and so situated that the possession and control of each gives an enhanced value to all of them, they are lands held together within the meaning of ss. 49, 63. See the judgments in *Conper Essex v. Local Board for Acton* (1889), 14 App. Cas. 153; *Caledonian Rail. Co. v. Lockhart* (1860), 3 Macq. 808, 815.

In the former of these cases, the land taken was let on building leases, and of that not taken, part was in hand and part was let for short periods for brickmaking. The whole, including what was taken and what was not, had been laid out as a building estate, but the land taken was separated from the other lands partly by other lands belonging to the owner and partly by a railway. The House of Lords held that these lands were lands held with the lands taken within the meaning of ss. 49, 63.

In another case, where it was decided that the lands were held together, the facts were as follows: The plaintiffs, a volunteer corps, held land under lease, which they used as a rifle range; immediately beyond the butts was marsh land, and beyond the marsh land were marsh meadows. The corps had leased these marsh meadows to prevent accidents from stray bullets, and had entered into a verbal agreement to pay a fixed sum in respect of the injury that might happen to cattle on the intervening land. The defendants took part of the marsh meadows in order to make a road, and in consequence of which the rifle range had to be abandoned. The court considered they were held together, mainly on the ground that they were held for a common purpose (*Holt v. Gas Light and Coke Co.* (1872), L. R. 7 Q. B. 728).

In a case where land was held on lease for thirty years, subject to the right of the lessor to determine the lease as to the whole or as to part by a three months' notice, and notice to treat for a strip was given, but before any proceedings were taken in regard to it, the lessor determined the lease as to the strip by a notice, and during the currency of that notice the company took possession, it was held that the lessee was only entitled to damages for severing the remainder of his land during the continuance of the term of three months for which the land taken was then held. The only ground upon which this decision can be supported would appear to be that the court could see no real tangible claim in respect of such severance (*R. v. Kennedy*, [1893] 1 Q. B. 533, explained in *Berley Heath Rail. Co. v. North*, [1894] 2 Q. B. 579).

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A person who acquires an interest in the severed land after the original compensation has been settled with the owner is not entitled to compensation although he may not have had notice of the service of notice to treat, see *Merriv v. Liverpool, St. Helena, and South Lancashire Rail. Co.*, [1903] 1 K. B. 652.

When a riparian owner has his right of flow and of access to a river taken from him, this is also apparently a case of severance, but this decision may to some extent depend on the words of the special Act (*Duke of Buccleuch v. Metropolitan Board of Works* (1872), L. R. 5 H. L. 418, pp. 459, 460).

Where a landowner has his land taken and he has also a right of pre-emption over adjoining land which was not taken, it was held that the right of pre-emption was personal, and that the promoters were not bound to purchase it or apparently pay compensation for its reduction in value by reason of the land being taken (*Clout v. Metropolitan and District Railways Joint Committee* (1883), 48 L. T. 257).

*Potential or prospective use of severed land.*—In estimating the damage done to the land by severance, the potential use of the land may be taken into account as well as in estimating the value of the land taken. If the prospective value would be depreciated by severance that may be considered. Thus, if a jury come to the conclusion that agricultural land will soon be valuable for building purposes, and that a portion of land will, by reason of the severance, be rendered useless as building land, that depreciation ought to be considered in assessing the amount (*R. v. Brown* (1867), L. R. 2 Q. B. 630).

In that case the damage was caused by reason of access being taken away. Under the Railways Clauses Consolidation Act, 1845 (8 Vict. c. 20), ss. 68, 69, magistrates have power to order accommodation works in such a case, but as they could then have ordered only such access as was suitable to agricultural land, it was held that the jury in considering the land as suitable for building purposes were right in not taking this into account (*S. C.*).

Where a man has a reservoir on the land which is not taken, the arbitrator is justified in taking into account the probable loss he might have suffered by supplying mills with water on the land taken (*Ripley v. Great Northern Rail. Co.* (1875), L. R. 10 Ch. 435).

In cases where land is severed by reason of a horizontal stratum being taken, the same principle is applicable in assessing the damage for severance. See, for example, *In re City and South London Rail. Co. and St. Mary, Woolwich, and St. Mary, Woolchurch Hair* (1903), 19 T. L. R. 363.

*Mines.*—When land is taken but the minerals are not, there is no compensation payable for severance or injurious affection of the minerals until the time arrives when the landowner is desirous of working them. The compensation in respect of mines is regulated in most undertakings, by special clauses, as, for example, the Railways Clauses Act, 1845, ss. 77—85, *mut.*, and the Waterworks Clauses Act, 1847, ss. 18—27, *post*, and see *Holliday v. Mayor of Wakefield*, [1891] A. C. 81; *Lord Gerard v. London and North Western Rail. Co.*, [1895] 1 Q. B. 459.

**III. Injurious affecting lands not taken which were held with those taken.**—The general principles of compensation for injuriously affecting lands, when land is not taken, are discussed in the notes to s. 68.

The principles of compensation when land is taken are somewhat different. If no land is taken from an owner, it is clear that no compensation is allowed for any damage caused by the carrying on or use of the works as authorised by Parliament, although it is allowed for damage caused by the construction of the works (*Hammersmith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171). If, however, part of a proprietor's land is taken from him, and the future use as authorised of the part so taken may damage the remainder of the proprietor's land, then such damage may be an injurious affecting of the proprietor's other lands, though it would not be an injurious affecting of the land

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of neighbouring proprietors from whom no land had been taken for the purpose of the intended works (*Corper Essex v. Local Board for Acton* (1889), 14 App. Cas. 153 : *per* HALSBURY, L.C., p. 161). In that case the subject for compensation was stated by Lord MACNAGHTEN thus : " When lands are required for the purpose of a public undertaking, and the owner claims compensation for injury to other lands held therewith, I think the tribunal which assesses compensation is bound to take into consideration the purpose of the undertaking, the consequences likely to result from the execution of the works on the land required, and any alteration in the character of the property which those works are calculated to bring about " (p. 178). From that statement of the principle it would appear to follow that when the works are carried on upon the land taken, and the depreciation is due to the use of the works which use is in itself legal, compensation is nevertheless to be awarded if such depreciation in fact takes place, and it is not necessary to show that the use of the works if unauthorised, would have given rise to actionable damage. See *S. C. per* Lord WATSON, p. 166 ; but of this Lord HALSBURY expressed doubt (p. 159) ; and *Buccleuch v. Metropolitan Board of Works* (1872), L. R. 5 H. L. 458. A further proposition should be noticed. If land is taken from a proprietor, and he complains of the injury caused to the remainder of his land by reason of the use of part of the works, which part is not constructed on the land taken from him, he has no right to statutory compensation (*Caledonian Rail. Co. v. Ogilvy* (1856), 2 Macq. 229 ; *City of Glasgow Union Rail. Co. v. Hunter* (1870), L. R. 2 H. L. (Sc.) 78, and see note to s. 68).

These principles have been applied in the following cases :

In a case where a railway company took some land and proposed to make their railway on it close to a cotton mill belonging to the same proprietor, and the jury found a sum which included injury to the premises by reason of the risk of fire being so much increased by the proximity to the railway as to render them less fit and convenient for the purposes of a cotton mill, and to make the mill not insurable except at a greatly increased premium, it was held that the jury had not exceeded their jurisdiction in so doing, and that the rule that compensation could only be given for that which, unless sanctioned by the private statute, would otherwise have been an actionable wrong, had no application to cases where the act complained of was done on land which had been taken from the claimant by force of statute (*In re Stockport, Timperley, and Altrincham Rail. Co.* (1864), 33 L. J. Q. B. 251 ; approved in *Corper Essex v. Acton Local Board* (1889), 14 App. Cas. 153).

Under the Thames Embankment Act, 1862 (25 & 26 Vict. c. 93), which incorporated the Lands Clauses Act, a riparian owner, who had the right of flow of the river along the whole frontage of his property on which was a mansion, and the use of a causeway which ran from his garden to low-water mark in the river, was deprived of the use of the causeway and of his communication with the river, and of the right of flow by the embankment of the river and the formation of a road between it and the garden. The umpire in assessing the compensation took into consideration the loss of the river frontage, the loss of privacy, and increase of dust and noise consequent on the creation of the embankment and road :—*Held*, that the owner's rights over the causeway were "lands" within the meaning of the special Act, and that the umpire was justified in taking these matter into consideration in assessing the compensation to be paid by reason of the taking of the causeway and right of river flow, and of the damage by severance and other injurious affection of the remaining lands (*Duke of Buccleuch v. Metropolitan Board of Works* (1872), L. R. 5 H. L. 418).

In the last case the question as to injuriously affecting the remaining lands was so complicated with other questions, that it has been doubted as to how far it was an authority for the general propositions above set out. See *per* Lord BLACKBURN in *Caledonian Rail. Co. v. Walker's Trustees* (1882),

7 App. Cas. 259, at p. 297; but the general principle is now established by *Couper Esser v. Acton Local Board* (1889), 14 App. Cas. 153.

In that case the land was taken for the purpose of making sewage works, and was severed from land laid out and intended to be used as a building estate. Evidence was given before a jury at the inquisition to the effect that the existence of sewage works, even if they were conducted so as not to create an actionable nuisance, depreciated the market value of neighbouring land for building purposes. The jury, in awarding compensation, awarded a large sum in respect of the severance and other injurious affection:—*Held*, that the jury had not exceeded their jurisdiction in so doing, and that compensation might be awarded for damage to be sustained by the owner by the injurious affection of his other lands, not only by the construction of the sewage works on the land taken, but also by their use (*Couper Esser v. Acton Local Board*, *supra*).

Where land was taken by a school board for the purpose of erecting a school, and a jury awarded a sum for the injurious affection to houses of the claimant on other land adjoining, and caused by the noise of the children at the school, it was held that the jury had acted rightly (*R. v. Pearce, Ex parte School Board for London* (1898), 78 L. T. 681). In a case where the land taken was part of a farm where the owner trained and exercised steeplechase horses and hunters, and evidence was given that the remainder would be useless for that purpose, and that he would suffer consequential damage by reason of his not being able to carry on his business, and that he would have to sell his horses at a loss, the jury awarded a large sum in respect thereof. The court refused to quash the finding on the ground that the application was too late, but stated that it was not clear whether the owner was entitled to compensation for this loss (*R. v. Sheward* (1880), 9 Q. B. D. 741, p. 743). The Andover and Weyhill Horse Company got a clause in the Metropolitan Railway (Hendon Extension) Act, giving them compensation under similar circumstances, although no land of the horse company was taken under the Act.

*Mines*.—For the provisions as to compensation in respect of injuriously affecting mines, see *post*, ss. 77—85 of the Railways Clauses Act, 1845, and ss. 18—27 of the Waterworks Clauses Act, 1847, and notes to these sections.

*Agreement by promoters to restrict construction of works*.—If promoters of undertakings, whether acting solely for the public good or for the purpose of profit, offer to enter into a contract not to use the land they are authorised, and require to take for the purposes for which they are authorised to take the land, such offer if accepted would not bind their successors, and would be void; and, therefore, cannot be used as a ground for reducing the amount to be assessed for injuriously affecting the lands of the same owner which are not taken.

Thus where harbour trustees were empowered to take part of a person's land, from which there was an unrestricted entrance to the harbour, and offered that the conveyance should restrict their use of the ground taken so as not to interfere with the access from the remaining property to the harbour, it was held that as the trustees had power to make erections on the piece of ground taken, which would effectually destroy the frontage, that they had no power to make such an agreement, and that the landowner was entitled to be compensated on the basis that such frontage might be destroyed (*Ayr Harbour Trustees v. Oswald* (1883), 8 App. Cas. 623).

If the trustees in that case could have bound themselves and their successors by the agreement, and had made such an offer which the landowner refused to accept, it would appear that he could not get compensation for the injury which he might have thus prevented (*S. C.*, p. 634).

Promoters may, however, agree to give the owner access to his premises over the land taken, provided that such use of the land taken is not incom-

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patable with the purposes for which the land is taken (*In re Gonty and Manchester, Sheffield and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439; *Grand Junction Canal Co. v. Petty* (1888), 21 Q. B. D. 273; and cases cited in note to s. 18, *ante*, p. 31).

*Second assessment.*—As to whether a second assessment can be made for future unforeseen damage, see s. 68, note, *post*, p. 130.

*Betterment.*—There is no provision in the Lands Clauses Acts allowing promoters to set off against an owner's claim for compensation for severance or other injurious affection, that the value of the land will be enhanced by reason of the use of the land taken by the promoters.

The claim to do so has been seldom made. The point was raised in *Senior v. Metropolitan Rail. Co.* (1863), 2 H. & C. 258, and WILDE, B., said: "It is the first time such an idea has been brought forward, and I see no reason for giving countenance to it" (p. 269). In *Eagle v. Charing Cross Rail. Co.* (1867), L. R. 2 C. P. 638, a plaintiff's easement of light was infringed in consequence of which he suffered damage by loss of trade, but the umpire found that, although such injury had been caused, that the plaintiff's interest in the premises was not diminished as the value of the property had been enhanced by the execution of the works, but the court held that this latter part of the finding was wholly irrelevant.

The legislature have, however, passed certain local acts for purposes of public utility in which the clauses of the Lands Clauses Acts dealing with and giving compensation for lands injuriously affected have not been incorporated, apparently on the ground that any injurious affection would be compensated by the benefit received. See *Ferrar v. Commissioners of Sewers* (1869), L. R. 4 Ex. 227, under City of London Sewers Act, 1848; see Metropolitan Management Act, 1858, and see *R. v. Mayor of London* (1867), L. R. 2 Q. B. 292; *Bigg v. Corporation of London* (1873), 15 Eq. 376.

As the future use of the land may be taken into account in estimating the damage by severance, and by other injurious affection of the land belonging to the same owner not taken (*Courper Enner v. Acton Local Board* (1889), 14 App. Cas. 153), it would appear that if the value of such land is enhanced by the future use of the land taken, the damage may in such cases be *nil*. But it cannot be set-off against the value of the interest taken, nor against other injuries to land which would give a cause of action. Under the Victorian Lands Compensation Act, 1869, provision is made that regard shall be had to the enhancement of value of the adjoining land belonging to the person to whom compensation is to be made. The Privy Council held this to mean that where an owner is entitled to compensation for damage to his lands by reason of severance from them of the land taken, or the lands being otherwise injuriously affected, and there is enhancement in value of his adjoining land, the one should be set-off against the other, and they further held that the enhancement in value may arise from the use as well as the construction of the works (*Harding v. Board of Land and Works* (1886), 11 App. Cas. 208).

In s. 38 (8) of the Housing of the Working Classes Act, 1890, *post*, and s. 13 of the Light Railways Act, *post*, there are provisions enabling arbitrators in assessing compensation to take into consideration the enhanced value of other lands of the same owner.

Local bodies have also been allowed to purchase more land than was actually necessary for the work authorised, and have been empowered to lease and sell such land for the purpose of recouping their outlay (*Galloway v. Mayor of London* (1866), L. R. 1 H. L. 34; *Quinton v. Mayor of Bristol* (1874), L. R. 17 Eq. 524). They cannot, however, take land for that purpose unless they are expressly authorised to do so (*Donaldson v. Mayor, etc. of South Shields* (1899), 79 L. T. 685).

Provisions have lately been inserted in local Acts for public purposes, in order to enable public bodies to recoup themselves for their outlay, by receiving from the owners of premises and lands part of the enhanced value. The report by a select committee of the House of Lords as to the form of these enactments, and a copy of these provisions from a local Act will be found in the Appendix. *post*. The principle is by no means new, and in the Act for rebuilding London after the Great Fire (18 & 19 Car. 2, c. 8), s. 26, there is a provision that the owners of houses and lands "meliorated" by the new streets to be made shall be assessed for the cost of the land necessary to carry out the widening.

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64. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the moneys so deposited under the provisions herein contained by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorised or required to be submitted to arbitration.

Where compensation to absent party has been determined by a surveyor, the party may have the same submitted to arbitration.

"By the valuation of a surveyor," *i.e.*, pursuant to s. 58. The case of the party not appearing, referred to in that section, is not included in this section.

*Deposited in the bank.*—The provisions are to be found in ss. 69—80.

"In the same manner."—As to the procedure in arbitration, see ss. 23, 25—37, and 63, and the Arbitration Act, 1889, *post*.

65. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

Question to be submitted to the arbitrators.

"The case last aforesaid," *i.e.*, in the cases mentioned in s. 64.

66. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default

If further sum awarded, promoters to pay or deposit same within fourteen days.

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**"Enforced by attachment."**—Generally as to enforcing an award, see s. 36, note "Enforcing the award," *ante*, p. 68.

Costs of the arbitration.

**67.** If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators; but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

**"The costs of and incident."**—As to costs in other cases of arbitration, see s. 34, *ante*, p. 63; and see the notes thereto, as to what costs are included; and see also ss. 51 and 52, *ante*, pp. 87, 89.

**"To be determined by the arbitrators."**—See s. 34, note "*To be settled by the arbitrators*," *ante*, p. 64. If either party require, the amount must be taxed by a taxing master, by s. 1 of the Lands Clauses (Taxation of Costs) Act, 1895, *post*, and see the notes thereto.

**Recovering the costs.**—See note to s. 34, "*Recovery of the costs*," *ante*, p. 66.

To be settled by arbitration or jury, at the option of the party claiming compensation.

**68.** If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special Act, or any Act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided; or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed,

and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any of the superior courts. Sect. 68.

**"Entitled to any compensation."**—A person is not entitled to compensation unless it can be shown that a right of compensation is given to him either by this Act or by the special Act. If there is no provision in the special Act giving compensation for injurious affection of lands, and if s. 68 is not incorporated, no party is entitled to compensation for the injurious affection of his lands, if no other land of his has been taken (*Ferrar v. Commissioners of Sewers* (1869), L. R. 4 Ex. 227).

Where the special Act incorporates the Lands Clauses Acts, but excludes those provisions which relate to "the purchase and taking of lands otherwise than by agreement," then ss. 16—68 are all excluded (*S. C. and R. v. Mayor of London* (1867), L. R. 2 Q. B. 292), and, in such a case, in the absence of provision in the special Act, there is no right to compensation. Compare, however, *Kirby v. Harrogate School Board*, [1896] 1 Ch. 437.

If, however, s. 68 is incorporated, but there is no proviso in the special Act giving compensation for injurious affection, it has been questioned whether s. 68 does in itself give a right or merely supplies the machinery for determining the amount (*Ferrar v. Commissioners of Sewers* (1869), L. R. 4 Ex. 227, 231). It seems clear, however, that s. 68 does give a right to compensation for the injurious affection of lands, at least when read with other sections of the Lands Clauses Act. In *R. v. St. Luke's* (1871), L. R. 6 Q. B. 572, LUSH, J., delivering the opinion of the court (BLACKBURN, MELLOR, and LUSH, JJ.), said: "We entirely agree with the Court of Exchequer (*i.e.*, in *Ferrar v. London Commissioners of Sewers* (1869), L. R. 4 Ex. 1, overruled on another point in (1869), L. R. 4 Ex. 227), that, where the entire Act is incorporated as it is here, no other enactment is needed in order to confer the right to compensation for lands injuriously affected." This opinion was confirmed in the Exchequer chamber ((1871), L. R. 7 Q. B. 148), and the court further held that because a special Act gave compensation in particular cases not necessarily within s. 68, that this was not inconsistent with compensation also being given under s. 68. In *Broadbent v. Imperial Gas Light Co.* (1857), 26 L. J. Ch. 277, 280, an opinion is indicated that s. 68 alone would give a right to compensation for the injurious affection of lands by the execution of the works.

If a person makes a claim for compensation for injuriously affecting, it is the duty of the arbitrator or jury to find the amount only and to leave the question of the claimant's title to be settled on proceedings to enforce or to set aside the award or verdict. The court will not restrain proceedings on the ground that the claimant has no right to compensation, and that the proceedings will be fruitless. See s. 23, note "The same shall be so settled," *ante*, p. 50; s. 25, note "Restraining arbitration," *ante*, p. 55; s. 50, note "Jurisdiction of sheriff and jury," *ante*, p. 83. If, however, a person makes an unsuccessful claim, he will not be entitled to the costs of the inquiry (*Todd v. Metropolitan Rail. Co.* (1871), 19 W. R. 720).

**No other remedy if act intra vires.**—If the promoters of an undertaking act properly within the limits of their statutory powers the only remedy for injurious affection of land is that provided by this and the special Act, and the person whose property is injured cannot proceed by action for damages or injunction to restrain the promoters. Thus, where ancient lights are likely to be interfered with, the owner may proceed under this section, but

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no other action will lie (*Duke of Bedford v. Dawson* (1875), L. R. 20 Eq. 353; *Clark v. School Board for London* (1874), 9 Ch. D. 120; and see *per Lord Blackburn, Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259, at p. 293; *Courage v. South Eastern Rail. Co.* (1902), 19 T. L. R. 61).

If the promoters acting within their powers do damage, for which no remedy is given by this or the special Act, the person damaged has no remedy (*Vaughan v. Taff Vale Rail. Co.* (1860), 5 H. & N. 679; *Hammer-smith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171; and see cases cited, *infra*, under "Principles of compensation for land injuriously affected."

**"Any lands or any interest therein."**—See definition of "Lands," in s. 3 and note thereon, *ante*, pp. 5, 6. As to the various interests to be compensated, see s. 18, notes "Lands" and "To all the parties interested," *ante*, pp. 28, 38. See also the notes to the same section as to what lands the promoters of an undertaking may take. Easements, when disturbed, do not come under lands which have been taken, but come under this section as lands which have been injuriously affected. Subsoil taken for the purpose of an underground railway is not an easement, although sometimes so-called in local acts. See *Farmer v. Waterloo City Rail. Co.*, [1895] 1 Ch. 527. Under the Waterworks Clauses Act, 1847, when the whole stream is diverted, the procedure is the same as for land taken; if part only, the procedure is the same as for land injuriously affected. See notes to ss. 6 and 12 of that Act, *post*.

Where a theatre was taken compulsorily, it was held that the persons who had the exclusive right for twenty-one years to sell refreshments therein, to use the bars and cloak-rooms, and to advertise therein, and to let the space for advertisement had no interest in land, to entitle them to claim compensation under this section (*Frank Warr & Co., Limited v. London County Council*, L. T. Journ., p. 34, May 9, 1903).

**"Which shall have been taken."**—The promoters of an undertaking authorised to take lands may not take them except according to the provisions of this Act and the special Act. Sections 84—88, *infra*, deal with the procedure when the promoters desire to take possession before the price has been ascertained or the purchase completed. Possession may also be given by consent of the proprietors of the land. As to this, see note to s. 84, *post*. A third class of cases arises where the promoters have entered upon lands and have omitted by mistake to purchase any interest thereon. These interests they may purchase within six months of the notice of such interest or within six months after the right thereto shall have been established by litigation if necessary (ss. 124—126).

If the promoters take possession of land otherwise than in these ways, or without having made payment, they are trespassers and are liable to penalties under s. 89; they may also be restrained from remaining in possession, and are liable also to an action for damages in trespass (s. 18, note "They shall give notice," *ante*, p. 35). In such a case, the landowner is not bound to proceed under this section but may bring an action (*Stretton v. Great Western and Brentford Rail. Co.* (1870), 5 Ch. App. 751). But if the promoters take possession under s. 85, and remain therein after the time limited for the compulsory taking of land without payment of compensation, their possession is not unlawful, and no action of ejectment will lie. It is for the landowner in such a case to initiate proceedings under this section for compensation (*Doe d. Armistead v. North Staffordshire Rail. Co.* (1851), 20 L. J. Q. B. 249). And it will be a good answer in such a case to a suit for specific performance that the landowner has not taken the steps indicated by this section (*Adams v. London and Blackwall Rail. Co.* (1850), 19 L. J. Ch. 557).

In the case of a person in possession of land as a tenant from year to year, which land has been taken, the remedy of the tenant is not under this section but under s. 121 (*Knapp v. London, Chatham, and Dover Rail. Co.* (1863), 32 L. J. Ex. 236, and see notes to s. 121, *post*).

*Must be an actual taking.*—In order, however, that this section may apply, the lands must actually have been taken or injuriously affected. The mere delivery of a notice to treat is not sufficient; the delivery of such a notice gives the landowner a right to have the value of the land assessed as provided by s. 21 and subsequent sections. See note to s. 21, "Shall be settled in manner hereinafter provided," *ante*, p. 46. Section 68 applies when the lands have been actually taken into the possession of the promoters, and no action will lie for the amount claimed as provided by this section for lands for which a notice to treat only has been given (*Burkinshaw v. Birmingham and Orford Junction Rail. Co.* (1850), 20 L. J. Ex. 246).

Similarly, if after a notice to treat, the promoters give notice of entering under s. 85, and in accordance therewith make a deposit and give a bond, but do not actually enter, this section does not apply (*R. v. Manley-Smith, Re Church and London School Board* (1892), 67 L. T. 197).

But if there has been a notice to treat and actual entry made afterwards, the procedure is not to have the amount assessed as provided by s. 21, but the proper procedure is under this section (*Eaton v. Mid Great Western Rail. Co.* (1847), 10 Ir. L. R. 310; *Adams v. London and Blackwall Rail. Co.* (1850), 2 M. & G. 118; but see *Tiverton Rail. Co. v. Loosmore* (1884), 9 App. Cas. 480, pp. 491, 498).

*What is a taking.*—A person had a leasehold interest in premises which were sublet to a yearly tenant; a notice under the special Act that the land would be required was given to the lessee, but the company subsequently arranged with the yearly tenant and received from him the key. The lessee proceeded under this section, and as the company did not summon a jury, brought an action to recover the amount claimed. It was pleaded that the company had not taken possession, but the jury found that they had, and the court held that they had rightly so found and that an action lay under this section (*Barker v. Metropolitan Rail. Co.* (1864), 17 C. B. (N.S.) 785).

Where a contractor had brought some waggons and rails and other implements on the land and left them but did not commence work, and it was shown that he had the consent of the tenants, and that he had done it without being authorised by the promoters, it was held that no actual taking was shown and an injunction restraining the promoters was refused (*Standish v. Mayor of Liverpool* (1852), 1 Drew. 1).

To appropriate and use the subsoil for the purpose of an underground railway is equivalent to a taking (*Farmer v. Waterloo and City Rail. Co.*, [1895] 1 Ch. 527, and see note to s. 84, "Shall not enter").

**"Injurious affected."**—When land has been taken, the compensation for the injurious affection of land of the same owner held therewith, is assessed as part of the purchase money for the land taken, as provided by ss. 49, 63. As to the principles of compensation in such a case, see notes to s. 63. All other injurious affection of lands by reason of the execution of the works, if the amount exceeds £50, is assessable (if at all) under this section. As to the principles of compensation in such a case, see note to this section, *infra*, p. 115.

Thus, a tenant from year to year, whose premises have been affected, should proceed under this section if no part has been taken and he claims more than £50 (*R. v. Sheriff of Middlesex* (1862), 10 W. R. 717); but, if part or the whole of his premises be taken, the proceedings should be before justices pursuant to s. 121 (*R. v. Manchester, Sheffield, and Lincolnshire Rail. Co.* (1854), 4 E. & B. 88; *Knapp v. London, Chatham, and Dover Rail. Co.* (1863), 32 L. J. Ex. 236; and cases cited in note to s. 121, *post*).

Similarly a limited owner, or person under disability such as a tenant for life, may proceed under this section and claim compensation for permanent injury to the land in the same way as an owner in fee (*Stone v. Mayor of Yeovil* (1876), 2 C. P. D. 99).

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The possessor of an *interessé termini* would also appear to have the right of claiming under this section (*Gillard v. Cheshire Lines Committee* (1884), 32 W. R. 943).

*Shall exceed the sum of £50.*—No provisions are made in this section for the cases where the amount claimed is £50 or under, but in such cases jurisdiction is given to justices to assess the amount (s. 22). The procedure in such a case is regulated by s. 24. For cases thereon, see the notes to these sections, *ante*, pp. 48, 52. As to s. 22 giving a right to compensation, see *R. v. St. Luke's* (1871), L. R. 6 Q. B. 572, p. 576, and L. R. 7 Q. B. 148, p. 152.

**"Such party may have the same settled."**—It is the party claiming who must begin the proceedings to have the amount settled whether the lands have been taken or injuriously affected (*Doe d. Armistead v. North Staffordshire Rail. Co.* (1851), 20 L. J. Q. B. 249; *Adams v. London and Blackwall Rail. Co.* (1850), 19 L. J. Ch. 557, cited *supra*). In the case of injuriously affecting merely, under which is included the disturbance of easements, the promoters are not bound to pay compensation or to take any steps to have the same ascertained, before they proceed to execute their works, nor are they bound by ss. 84 or 85 to make any deposit or to enter into any bond (*Hutton v. London and South Western Rail. Co.* (1849), 7 Hare, 259; *Macey v. Metropolitan Board of Works* (1864), 33 L. J. Ch. 377; *Temple Pier Co. v. Metropolitan Board of Works* (1865), 34 L. J. Ch. 262). Nor can they be required to take the injured premises or do any act in respect thereof (*R. v. Poulter* (1887), 20 Q. B. D. 132).

The party claiming is not bound to give a month's notice of his claim or to take proceedings within six months of the accrual of his claim, in cases where the promoters are a public body, under a statute which provides that they are entitled to one month's notice of any proceedings to be taken against such body, and that such proceedings must be brought within six months of the accrual of the cause of action or ground of claim or demand. Proceedings to recover compensation for works done, under powers conferred by statute on such a body, do not fall within such a proviso (*Delany v. Metropolitan Board of Works* (1867), L. R. 2 C. P. 532; L. R. 3 C. P. 111).

**"Stating in such notice the nature of the interest."**—This provision is similar to the one made in s. 23, except that if the owner take no steps the promoters are not bound to pay any compensation. The particulars of the nature of the interest required by this section are practically the same as those referred to in s. 21, and required under s. 23 (*Healey v. Thames Valley Rail. Co.* (1864), 13 W. R. 44). And see the cases cited to s. 21, note "The particulars of his claim," *ante*, p. 45. A person who has a fourteen years' lease of premises with an option of determining it on six months' notice, and who determines it because a railway company are about to injure his right to light, ought only to state his interest as lasting to the expiration of the six months' notice (*R. v. Poulter* (1887), 20 Q. B. D. 132).

**"By arbitration in the manner herein provided."**—That is in the manner provided in ss. 25—37, which are now to be read with the Arbitration Act, 1889, *post*. Section 34, which provides how costs are to be borne, also applies to this section (*Yates v. Mayor of Blackburn* (1860), 29 L. J. Ex. 447; *Metropolitan District Rail. Co. v. Sharpe* (1880), 5 App. Cas. 425). And see notes to s. 34, *ante*, p. 63.

**"Within twenty-one days . . . issue their warrant."**—If a claimant has given a notice of his desire to have the compensation assessed by a jury, the promoters must summon such jury within twenty-one days after receiving

it, and if the claimant before they have issued their warrant, desire a special jury under s. 54, such later notice does not extend the time, but the warrant to summon must issue within twenty-one days from receipt of the first notice, otherwise an action will lie for the amount claimed (*Glyn v. Aberdare Rail. Co.* (1859), 28 L. J. C. P. 271).

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**"A jury for settling the same in the manner herein provided."**—The provisions here referred to are those contained in ss. 38—57, and these provisions in so far as they are applicable, apply to assessments by jury under this section (*Richardson v. South Eastern Rail. Co.* (1852), 21 L. J. C. P. 22). Section 38, which requires the promoters to give notice before issuing their warrant to a jury, however, does not apply (*Railston v. York, Newcastle, and Berrick Rail. Co.* (1850), 15 Q. B. 404). And see notes to ss. 38, 51, *ante*, pp. 73, 87.

Section 51, which provides how the costs shall be borne, has been held to be applicable to assessments before juries under this section (*Richardson v. South Eastern Rail. Co.* (1852), 21 L. J. C. P. 22; *Hayward v. Metropolitan Rail. Co.* (1864), 33 L. J. Q. B. 73), and the time limited for making an offer under that section, in cases under s. 68, is the time up to giving the ten days' notice of the date fixed for the inquiry provided by s. 46 (*Hayward v. Metropolitan Rail. Co.* (1864), 33 L. J. Q. B. 73). And see s. 51, note "The sum previously ordered," *ante*, p. 88.

If a claimant has no claim, he is entitled to no costs if he require the promoters to have his claim assessed under s. 68 (*Todd v. Metropolitan Rail. Co.* (1871), 19 W. R. 720; *Sharpe v. Metropolitan Rail. Co.* (1879), 4 Q. B. D. 645, p. 652; *cf. Capell v. Great Western Rail. Co.* (1882), 9 Q. B. D. 459).

Generally as to settling the amount of compensation by jury, see the notes to ss. 38—57.

**"By action."**—When a claim is made against promoters they are bound to proceed under this section, otherwise an action will lie against them for the full amount claimed. Under the old system of pleading, it was held that to such an action they may not plead that "the claim was not a *bona fide* claim within the statute, but in fraud of the defendants, and without reasonable cause," but it would appear that they might have set out the facts on which they relied to show that it was fraudulent (*Hooper v. Bristol Port Railway and Pier Co.* (1866), 35 L. J. (N.S.) C. P. 299, and see note thereto).

As the assessment merely determines the amount, all questions of title and right to compensation may be raised by defence to such an action. See s. 23, note, "The same shall be so settled," *ante*, p. 50.

#### PRINCIPLES OF COMPENSATION FOR INJURIOUS AFFECTION OF LAND.

**General rules.**—In the notes to s. 63 are discussed the principles for determining the compensation for injuriously affecting land which has been held with the land taken. Here, it is proposed to discuss the principles of compensation for injuriously affecting lands in all other cases. In the absence of express provision in the special Act it is clear that compensation can be recovered, although no part of the land has been taken (*Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; *Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259, and cases cited in this note). That the same principles apply whether land has been taken or not, provided the land taken be not held with the land not taken, is also clear (*Caledonian Rail. Co. v. Ogilvy* (1856), 2 Macq. 229; *City of Glasgow Union Rail. Co. v. Hunter* (1870), L. R. 2 H. L. (Sc.) 78, and see *per Lord CHELMSFORD* in *Burcleuch v. Metropolitan Board of Works* (1872), L. R. 5 H. L. 418,

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p. 458, and *per* Lord WATSON in *Courper Esser v. Acton Local Board* (1889) 14 App. Cas. 153, p. 166).

The principles herein stated apply equally to cases of compensation under ss. 6, 16 of the Railways Clauses Act, 1845, *post* (*Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; *Hammermith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171), to cases under ss. 6, 12 of the Waterworks Clauses Act, 1847, *post* (*New River Co. v. Johnson* (1860), 2 E. & E. 435, and see *per* BLACKBURN, J., p. 446), and also to cases under s. 308 of the Public Health Act, 1875 (*cf.* *Hall v. Mayor of Bristol* (1867), L. R. 2 C. P. 322; *Brierley Hill Local Board v. Pearnall* (1884), 9 App. Cas. 595). The same principles will be found to apply to nearly all undertakings carried out under public statutes. Modifications will, however, be found under the mining sections of the Waterworks Clauses Act, 1847, *post*, more particularly s. 27, and see also the Housing of the Working Classes Act, 1890, s. 21, *post*.

There are four propositions which have been laid down by the House of Lords for determining whether a right of compensation for injurious affection exists under these statutes :

I. *The damage caused must be by reason of what has been authorised by the legislature and not from other Acts.*

If there is wrong done which is not authorised by the powers conferred by the legislature, the common law right of action remains. The statutes only give compensation for losses sustained in consequence of what the promoters of an undertaking may do lawfully under their statutory powers, and that for anything done in excess of these powers or contrary to what the legislature, in conferring these powers, has commanded, the proper remedy is by action (*Caledonian Rail. Co. v. Colt* (1860), 3 Macq. 833; *Imperial Gas Light and Coke Co. v. Broadbent* (1859), 7 H. L. Cas. 600).

II. *The damage must arise from that which would, if done without the authority of the legislature, have given rise to a cause of action.*

This proposition was first clearly enunciated by KEATING, J., as counsel in *Glorer v. North Staffordshire Rail. Co.* (1851), 16 Q. B. 912, 923, and adopted by Lord CAMPBELL in that case and in *Re Penny and South Eastern Rail. Co.* (1857), 7 E. & B. 660. It was discussed in the House of Lords in *Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175, where it was disputed by Lord WESTBURY, but was affirmed by the majority, and has been followed by the House of Lords in subsequent cases (*Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; *Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259; *Fleming v. Newport Rail. Co.* (1883), 8 App. Cas. 265).

The mere fear of injury which, if it happened would give a cause of action, gives no right to compensation. The statute gives no claim *quia timet* in respect of injury to be sustained in the future (*R. v. Poulter* (1887), 20 Q. B. D. 132).

It follows, therefore, that the general law of *tort* is applicable up to the limits imposed by Propositions III. and IV., but from these it will be seen that it is not every Act which would have given a right of action at common law that will give a ground for compensation. The rule as to remoteness of damage is also applicable (*S. C. and Clarke v. Wandsworth Local Board* (1868), 17 L. T. (N.S.) 549).

III. *The damage must arise from a physical interference with some right, public or private, which the owners or occupiers of property are by law entitled to make use of, in connection with such property, and which gives an additional market value to such property apart from the uses to which any particular owner or occupier might put it.*

This principle has been evolved as the result of a number of decisions. It was suggested by THESIGER, L.J., acting as counsel in the *Metropolitan Board of Works v. McCarthy*, and was approved by Lord CAIRNS in his

judgment (1874), L. R. 7 H. L. 243, p. 253. Lord CHELMSFORD also accepted it with the qualification that where the right which the owner of the house is entitled to exercise, is one which he possesses in common with the public, there must be something peculiar to the right in its connection with the house to distinguish it from that which is enjoyed by the rest of the world (p. 256). Lord SELBORNE in *Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259, p. 276, stated the law on this point in the following propositions:

1. When a right of action, which would have existed if the work in respect of which compensation is claimed had not been authorised by Parliament, would have been merely personal without reference to land or its incidents, compensation is not due under the Acts.
2. Loss of trade or custom by reason of a work not otherwise directly affecting the house or land in or upon which a trade has been carried on, or any right properly incident thereto is not by itself a proper subject for compensation.
3. The obstruction by the execution of the work of a man's direct access to his house or land, whether such access be by a public road or by a private way is a proper subject for compensation.

See *Caledonian Rail. Co. v. Ogilvy* (1856), 2 Macq. 229; *Ricket v. Metropolitan Board of Works* (1867), L. R. 2 H. L. 175; *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; and see per WILLER, J., in *Beckett v. Midland Rail. Co.* (1867), L. R. 3 C. P. 82, p. 94.

IV. *The damage must arise from the execution of the works and not by their subsequent use.*

This proposition was finally established in the House of Lords in the case of *The Hammermith Rail Co. v. Brand* (1869), L. R. 4 H. L. 171, after much variance of judicial opinion. It affirmed *R. v. Pease* (1832), 4 B. & Ad. 30; and *Vaughan v. Taff Vale Rail. Co.* (1860), 5 H. & N. 679; and has been recognised as settled law in several subsequent judgments in the House of Lords (*Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259; *London, Brighton, and South Coast Rail. Co. v. Truman* (1885), 11 App. Cas. 45; *Cowper Essex v. Acton Local Board* (1889), 14 App. Cas. 153; *Canadian Pacific Rail. Co. v. Roy*, [1902] A. C. 220). It follows, therefore, that in order to determine whether or not compensation can be awarded, that the question to be considered is whether there would have been any injury if the works had been executed and then left unused.

The general result of these propositions is, that under the Lands Clauses Acts and the special Acts incorporating them compensation will be given when land or any right properly incident thereto has been injured by the proper execution of works authorised by the legislature and not otherwise. If injury is caused otherwise than to land, or to land but only by the use of the works, there is no remedy; if it is caused by acts not authorised or by negligence or other improper conduct of the promoters either in the construction of the works or in their use the remedy is by action.

These principles are illustrated in the cases cited, *infra*, which have been decided on questions of compensation.

#### CASES WHERE COMPENSATION NOT RECOVERABLE.

**I. Remedy by action.**—In accordance with the *first* proposition, it was held in the following cases that no compensation could be recovered because the act causing the injury was not authorised, but that the remedy was by action:

*Improper or negligent construction of works.*—If the promoters construct their works in such a negligent or improper manner that damage results to adjoining landowners, the remedy is by action and not for injurious affecting. Thus, if a railway company construct an embankment so carelessly and without proper drainage, so that adjoining lands are flooded, the

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remedy is by action (*Brine v. Great Western Rail. Co.* (1862), 31 L. J. Q. B. 101; *Laurence v. Great Northern Rail. Co.* (1851), 20 L. J. Q. B. 293).

If the damage ensues as the consequence of work properly done, it must be sought for in a claim for compensation; but if, as the result of negligence in the doing of it, it is properly the subject of an action, see *per LUSH, J.*, in *Hall v. Mayor, etc. of Batley* (1877), 47 L. J. Q. B. 148, p. 151, a case in which a mill was caused to fall by the negligent action of the defendants' servants in making a drain.

Similarly, if in the course of making a sewer an adjoining owner is injured and the jury find that it was due to negligence, the remedy is by action (*Clothier v. Webster* (1862), 31 L. J. C. P. 317; see also *Fairbrother v. Bury Rural Sanitary Authority* (1889), 37 W. R. 544).

Promoters of public undertakings are bound to exercise the powers given to them in derogation of individual rights with moderation and discretion, and not negligently; thus where a railway company in executing authorised works took insufficient precautions to secure the safety of an adjoining house, the court granted an injunction to restrain the negligent exercise of their powers and damages (*Biscoe v. Great Eastern Rail. Co.* (1873), 16 Eq. 636). Abuse of powers is an excess and may be restrained by injunction, thus if promoters in constructing a railway work night and day unnecessarily, and so cause a nuisance to the neighbours, they will be restrained from so doing (*Roberts v. Charing Cross, Euston, and Hampstead Rail. Co.* (1903), 87 L. T. 732, and see *Coats v. Clarence Rail. Co.* (1830), 1 Russ. & My. 181). If in an arbitration for compensation it appear that part of the injury was caused by negligence, it would seem that the arbitrator has no power to award in respect of the injury clearly shown to be so caused. See *Uttley v. Todmorden Local Board* (1874), 44 L. J. C. P. 19. No action will lie if in carrying out the works in a proper manner they cause a nuisance (*Harrison v. Southwark and Vauxhall Waterworks Co.*, [1891] 2 Ch. 409). Nor will an action lie if a company in carrying out the works commit a breach of a covenant by which they are bound. The remedy is compensation (*Manchester, Sheffield and Lincolnshire Rail. Co. v. Anderson*, [1898] 2 Ch. 395). Where a railway company are by their Act required to make a branch railway, in place of one disturbed by the execution of their works, the proper remedy in case of neglect is by action (*Caledonian Rail Co. v. Colt* (1860), 3 Macq. 833).

*Improper carrying on of the works—Nuisance.*—A nuisance caused by the improper or negligent carrying on of the works gives a cause of action. Thus, where a waterworks company were empowered to make a reservoir for storage of water during floods to compensate millowners for other water taken, and such reservoir was made but was used in such a way as to foul the stream, it was held that this was not authorised, and, therefore, that no compensation would be claimed, but that the company might be restrained by injunction (*Cloves v. Staffordshire Potteries Waterworks Co.* (1872), L. R. 8 Ch. 125; *Geddis v. Proprietors of Bann Reservoir* (1878), 3 App. Cas. 430; *Freemantle v. London and North Western Rail. Co.* (1861), 10 C. B. (N.S.) 89). For a case of fouling of stream by drainage under the Metropolitan Local Management Act, 1855 (18 & 19 Vict. c. 120), where it was held that there was no right to compensation, see *Cator v. Levisham Board of Works* (1864), 34 L. J. Q. B. 74; and for other cases of fouling streams, see *Young v. Bankier Distillery*, [1893] A. C. 191; *McIntyre v. Gavin*, [1893] A. C. 268; for blocking a drain, *Blagrove v. Bristol Waterworks Co.* (1856), 1 H. & N. 369; and for a case of nuisance from a gas retort, *Imperial Gas Light and Coke Co. v. Broadbent* (1859), 7 H. L. Cas. 600; and see *Attorney-General v. Gas Light and Coke Co.* (1877), 7 Ch. D. 217). If a water main burst negligence must be shown in order to recover damages (*Green v. Chelsea Waterworks Co.* (1894), 70 L. T. 547). In the case of nuisance by gas, negligence need not be shown (*Batcheller v. Tunbridge Wells Gas Co.* (1901), 65 J. P. 681).

Where a local board subtract from a river a large quantity of water for the purpose of flushing a sewer so that a mill below has not enough water to continue working, this was held to be beyond their powers, and that the millowner was not injuriously affected so as to recover compensation, but his remedy was by action (*R. v. Darlington Local Board* (1865), 35 L. J. Q. B. 45 : and see note, "Other nuisances," and notes to s. 17 of the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56)).

**II.—Damage must be actionable.**—In the following cases it has been held that no compensation could be recovered, because no action would have lain according to the second proposition, *supra* :

*Damage by natural use of land taken.*—It is a general rule of law that the owner of one piece of land has a right to use it in the natural course of user, unless in so doing he interferes with some right created either by law or contract. See *Wilson v. Waddell* (1876), 2 App. Cas. 95, 99. Promoters of undertakings have similarly the right to use the land according to the natural course of user, and any loss, damage, or inconvenience caused by such user, even during the construction of the work, gives no ground for compensation.

*Pulling down houses.*—Thus, they may pull down the houses thereon, and no person having business premises in the neighbourhood will be entitled to compensation for loss of profits caused thereby (*R. v. Vaughan* (1868), L. R. 4 Q. B. 190 : and see also *R. v. London Dock Co.* (1836), 5 A. & E. 163, under a private Act). Promoters who have purchased a house may also take it down and rebuild it, and may make use of the party-walls of adjoining houses under local building Acts, and will not be liable to pay compensation for loss of trade or inconvenience caused thereby (*R. v. Hungerford Market Co., Ex parte Yeates* (1834), 1 A. & E. 668, and *Ex parte Eyre* (1834), 1 A. & E. 676).

*Riparian rights.*—Similarly, as a riparian owner may remove shoals out of the bed of a river and other casual obstructions so also may promoters, and no ground of compensation will exist if by reason thereof a person's lands are more easily flooded (*Rhodes v. Airedale Drainage Commissioners* (1876), 1 C. P. D. 380, 402).

*Light and prospect.*—So promoters may raise an embankment from which an adjoining owner's premises may be overlooked, and his privacy destroyed (*R. v. Penny and South Eastern Rail. Co.* (1857), 7 E. & B. 660). It would appear that the vibration caused by ballast trains during the construction of the works is a ground of compensation (S. C. 672). Promoters may put up buildings which will interfere with an adjoining owner's view, and if the adjoining owner has not acquired an easement of light by law or contract no compensation can be recovered. See *Butt v. Imperial Gas Co.* (1866), L. R. 2 Ch. 158 ; *Eagle v. Charing Cross Rail. Co.* (1867), L. R. 2 C. P. 638). If, however, part of an owner's easement of light has been destroyed, it has been held that compensation may be given for injury to other lights, not ancient lights, which were obstructed by the same building. One of the grounds of this decision was that this would be the natural consequence of the tort ; the other ground was that the principle laid down in *Buckleuch v. Metropolitan Board of Works* (1872), L. R. 5 H. L. 418, and *Courper Essex v. Acton Local Board* (1889), 14 App. Cas. 153, was applicable, which would appear to be at least doubtful, as to which principle see note to s. 63 (*Re London, Tilbury and Southend Rail. Co. and the Trustees of Gower's Walk Schools* (1889), 24 Q. B. D. 326). If the land taken is subject to a restrictive covenant as to erecting buildings, then any interference to light and prospect may be the subject of compensation. See note *infra* "Breaches of covenants."

*Support.*—On the same principle persons cannot claim compensation for loss of support adjacent or subjacent to lands upon which buildings have

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been erected unless the right has been acquired by statute, grant or by twenty years' user, although every landowner has a right to the lateral support of his neighbour's land, so far as it is necessary to sustain the soil in its natural state. For the general law, see *Bonomi v. Backhouse* (1861), 9 H. L. Cas. 503; *Dalton v. Angus* (1881), 6 App. Cas. 740.

Thus, where a railway company dug into land not contiguous but near to a sewer, so that the sewer lost its lateral support and burst, and the sewer not having been made for twenty years, it was held that the company were not bound to pay compensation as no right to lateral support had been acquired for the sewer, either by use or by the Acts empowering the local authority to make it (*Metropolitan Board of Works v. Metropolitan Rail. Co.* (1868), L. R. 3 C. P. 612; (1869) L. R. 4 C. P. 192; and see as to this case, *Roderick v. Aston Local Board* (1877), 5 Ch. D. 328, 332). Of course, if such a right has been acquired compensation must be awarded. See *infra*, p. 128, and as to support from mines, see notes to ss. 77—85 of the Railways Clauses Act, 1845, *post*.

*Intercepting water.*—A person who owns land may dig therein and apply all that is there found to his own purposes, and if in the exercise of such right he intercepts or drains off the water which has collected, or which might collect from underground springs in his neighbour's well, this inconvenience to his neighbour cannot be a ground for compensation as it would not form a cause of action (*New River Co. v. Johnson* (1860), 29 L. J. M. C. 93, and as to the general law, see *Chasemore v. Richards* (1859), 7 H. L. Cas. 349, and *Acton v. Blundell* (1843), 12 M. & W. 324). Where the effect was to cut off water which accumulated from springs in a pond which overflowed and made a rivulet and supplied other ponds, it was held that there was no ground for compensation even for the water after it had risen (*R. v. Metropolitan Board of Works* (1863), 32 L. J. Q. B. 105; *Re Willard and the Eastbourne Water Co.*, Times, February 1st, 1899). On this principle an owner may drain away water which affords the supply to a public water-works (*Bradford Corporation v. Pickles*, [1895] A. C. 587, and see *Bradford Corporation v. Ferrand*, [1902] 2 Ch. 655).

As to intercepting water above ground, see *McNab v. Robertson*, [1897] A. C. 129; *Broadbent v. Ramsbotham* (1856), 11 Ex. 602; *Raistron v. Taylor* (1855), 11 Ex. 369; *Dudden v. Clutton Union* (1857), 1 H. & N. 627; and as to support from water, *Popplewell v. Hodgkinson* (1869), L. R. 4 Ex. 248; *Jordeson v. Sutton Southcoates and Drypool Gas Co.*, [1899] 2 Ch. 217; and *cf. Trinidad Asphalt Co. v. Ambard*, [1899] A. C. 594.

*Cases of alleged right.*—*Ferry.*—Where a ferry was alleged to be interfered with by the building of a bridge half a mile off, it was held that the right of ferry was to have the exclusive ferrying of goods and passengers from the one side to the other in the locality of the ferry, and that the creation of new highways and the taking of persons and goods across from one side of the river to these highways, whether by boat or bridge, was no infringement (*Hopkins v. Great Northern Rail. Co.* (1877), 2 Q. B. D. 224).

*Right of way.*—Where a person acquired a house by feu contract in a building estate with right to use such streets as might be laid down and opened, according to a building plan, which the superior landlord had the option and power to vary, and a railway company took part of the land of the superior landlord, on which no streets had been opened, but by their works blocked up a proposed street, it was held that as the superior landlord was under no obligation to continue the building plan, and as the roads had not been opened, the owner of the house would have had no right of action against the landlord or the railway as his successors, and, therefore, he had no right to compensation (*Fleming v. Newport Rail. Co.* (1883), 8 App. Cas. 265).

When a public right is invaded, no individual has a cause of action unless he can show he has suffered particular damage more than that of his fellow-citizens, see *infra*, cases on "Access to premises," p. 124.

Where a local board raised the level of a highway which had subsided, owing to minerals below having been removed, the owners of houses on the highway were held to have no right of compensation as they had no right to have the road maintained at the level to which it had sunk (*Burgess v. North-wick Local Board* (1880), 6 Q. B. D. 264).

*Temporary obstruction of public pathway.*—If a local board for the purposes of carrying out public works construct a hoarding and obstruct temporarily the traffic, but not for an unreasonable time, no action will lie, and, therefore, such acts form no ground for compensation (*Herring v. Metropolitan Board of Works* (1865), 19 C. B. (N.S.) 510; and see *Manchester, Sheffield and Lincolnshire Rail. Co. v. Anderson*, [1898] 2 Ch. 394).

But a temporary obstruction may in certain cases give rise to a cause of action, and, if the land or premises are affected, to compensation. *Per WILLES, J.*, in *Beckett v. Midland Rail. Co.* (1867), L. R. 3 C. P. 82, p. 97; *Fritz v. Hobson* (1880), 14 Ch. D. 542. The dictum of CHELMSFORD, L.C., in *Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175, 189, to the contrary has not been accepted. See *Ford v. Metropolitan Rail. Co.* (1886), 17 Q. B. D. 12, pp. 20, 24 and 28. Even when the obstruction is unnecessarily delayed an action will not lie unless the person aggrieved can show he has been injured directly, specially and substantially (*Master v. London County Council* (1898), 79 L. T. 170).

*Access to sewer.*—Where a local authority had laid a sewer through land purchased by a railway company, but not then used, and the railway company afterwards made an embankment thereon and made the access to the sewer more difficult, it was held that the only right that the local authority had was such access as was reasonably necessary to repair the sewer, and, as that had not been prevented, but only made less easy and convenient, the local authority were not entitled to compensation (*Mayor of Birkenhead v. London and North Western Rail. Co.* (1885), 15 Q. B. D. 572).

**III. Injury must be to land.**—In the following cases it was held that no compensation could be recovered according to the *third* proposition, because the injury was not due to a physical interference with land or some incident thereto :

*Level crossing.*—Personal inconvenience caused by a level crossing near a house gives no right of compensation if the property itself is not depreciated in value (*Caledonian Rail. Co. v. Ogilvy* (1856), 2 Macq. 229, discussed in *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243, and *Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259, and followed in *Wood v. Stourbridge Rail. Co.* (1864), 16 C. B. (N.S.) 222).

*Loss of profits.*—Where a public-house was situated by the side of a public footway, and a railway company in exercise of their powers obstructed streets leading to this footway so as to make the access to the public-house inconvenient, and the occupier complained that he had suffered loss of business in consequence, it was held that he was not entitled to compensation (*Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; approving *R. v. London Dock Co.* (1836), 5 Ad. & E. 163, overruling *Senior v. Metropolitan Rail. Co.* (1863), 2 H. & C. 258). The grounds upon which *Ricket's Case* was decided were various and have not been altogether accepted; but, as explained in *Metropolitan Rail. Co. v. McCarthy* (1874), L. R. 7 H. L. 243, p. 256, and *Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259, the accepted ground of the decision was that there was no injury to the house itself. Where a cellar of a house had been interfered with and loss

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of profit had also been caused by diversion of traffic, the latter loss was held to afford no ground for compensation (*Bigg v. Corporation of London* (1873), 15 Eq. 376). As to a case where the access has been obstructed, so as to affect the house and thereby diminish the trade, see *Wadham v. North Eastern Rail. Co.* (1884), 14 Q. B. D. 747; (1885), 16 Q. B. D. 227. For a case under the Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), see *Herring v. Metropolitan Board of Works* (1865), 19 C. B. (N.S.) 510.

Where the occupier of premises near the Thames had been in the habit of using public rights of drawing water and bringing barges to a draw dock, in connection with his business, and he was obstructed in the enjoyment of these rights by the works of an embankment and in consequence his business suffered, it was held that as there was no right or easement appurtenant to the claimant's premises in respect thereof, and the injury being personal, there was no ground for compensation (*R. v. Metropolitan Board of Works* (1869), L. R. 4 Q. B. 358). In an old case under a private Act it was held that no compensation was due to the owners of a brewery for a loss arising to them in their business from the deterioration of the water of a public river from which the brewery had been supplied by pipes, as the use of the water was a right common to all the King's subjects (*R. v. Bristol Dock Co.* (1810), 12 East, 429).

See *infra*, note "Access to premises."

**IV. Damage must be caused by the construction.**—In accordance with the fourth proposition, it has been held in the following cases that no compensation could be recovered because the act causing the injury was caused by the user of the works and not by the construction :

*Vibration.—Smoke.*—If a house adjoining a railway is injured by vibration, noise, and smoke caused by passing trains, after the construction of the works, there is no compensation due, but for vibration during the construction of the works from the same cause compensation would appear to be due (*Hammermith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171; *Re Penny and South Eastern Rail. Co.* (1857), 7 E. & B. 660).

The case of *London and North Western Rail. Co. v. Brudley* (1851), 3 Mac. & G. 336, as to this point is overruled, and if beer in vaults adjoining a railway turn sour in consequence of the vibration of passing trains there is no right to compensation. See *per* BLACKBURN, J., in *Hammermith Rail. Co. v. Brand* (1869), L. R. 4 H. L., p. 197. Annoyance by noise and smoke by passing trains, if not due to improper working, gives no ground for compensation (*City of Glasgow Union Rail. Co. v. Hunter* (1870), L. R. 2 H. L. (Sc.) 78). But it has been held to be a ground for compensation if done on land subject to a restrictive covenant (*Long Eaton Recreation Grounds Co. v. Midland Rail. Co.* (1901), 71 L. J. K. B. 74; affirmed, [1902] 2 K. B. 574).

Where a railway company were authorised to construct an underground railway, and in so doing purchased some land at the back of a dwelling-house and made a tunnel through such ground and an aperture in such ground for the purpose of ventilating the tunnel, and some years later enlarged the aperture, the effect of which was that the quantity of smoke, steam, and foul air coming from the railway was largely increased and the house depreciated in value, the lessee of the house, who became lessee after the original construction, but before the alteration, was held not to be entitled to compensation as the damage was caused by the use of the works and not by their construction (*Attorney-General v. Metropolitan Rail. Co.*, [1894] 1 Q. B. 384).

The rule of law upon which these cases were decided was that an owner of property which was injured by the construction or use of works upon other land than his own had no remedy for such injury while the construction or use of the works did not cause a nuisance and was conducted without negligence. The owner upon whose land such works were constructed and used, whose remaining land was injured by the working or use, was entitled

to compensation on the ground that, but for the Act of Parliament, he could have prevented such use on his own land as would prove injurious to the rest of his estate. That principle, which was doubted at one time, has, as we have seen, been well established in the cases referred to in note to s. 63, *ante*, pp. 105, 106.

A new departure, however, was definitely made in the session of Parliament (of 1902), when a clause was, after long argument, inserted in all the Bills authorising underground railways in London giving compensation to owners of lands, houses, and buildings which should be injuriously affected by reason of the working of the railway where constructed in tunnel, notwithstanding that no part of the property of such owner, lessee, or occupier was taken by the company. This is a very important modification of the general law. We append the clause which was inserted in these Acts. It is perhaps not very happily worded. It reads, "in addition to the provisions of the Acts" the company shall make. It gives compensation to occupiers. It limits the time for demanding compensation to two years from the opening of the railway, and it declares that the arbitrator shall act under the Arbitration Act, 1889.

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(1) In addition to the provisions of the Acts incorporated herewith with respect to compensation for lands taken or injuriously affected the company shall make compensation to the owner lessee and occupier of any land house or building which shall be injuriously affected by reason of the working of the railway where constructed in tunnel (including the working of lifts and any other works in connection with the said railway) notwithstanding that no part of the property of such owner lessee or occupier is taken by the company. Provided that all claims for compensation under this section shall be made within two years from the date of the opening of the railway for public traffic and shall be settled by a single arbitrator under and subject to the provisions of the Arbitration Act 1889 save that where the parties do not concur in the appointment of an arbitrator the Board of Trade shall have the powers of the court or a judge under section 5 of the said Act.

(2) An arbitrator under this section may with the consent of all parties concerned hear together any class or group of claims under this section.

*Other nuisances.*—Annoyance caused by trains passing a level crossing by reason of frightening horses and causing delay gives no ground for compensation (*Caledonian Rail. Co. v. Ogilvy* (1856), 2 Macq. 229; and see this case discussed in *Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259).

Where a railway company were indicted for a nuisance by frightening horses by use of locomotives on a railway which ran close to a highway, it was held that the company were authorised to do so by statute (*R. v. Pease* (1832), 4 B. & Ad. 30).

A railway company may also purchase land and turn the same into a cattle yard for the purposes of their business, and no action will lie against them if a nuisance is caused to adjoining owners by reason of the noise of the cattle and drovers, if the business is not carried on negligently, as such yards are necessary and incidental to the authorised use of the railway for cattle traffic (*London and Brighton Rail. Co. v. Truman* (1885), 11 App. Cas. 45). It is now usual to insert in railway Acts that land acquired for extraordinary purposes shall not be used so as to create a nuisance.

A railway company authorised to use locomotive engines is not responsible for damage from fire occasioned by sparks emitted from an engine running on their railway if they have taken every precaution in their power, and adopted every means science can suggest, to prevent injury from fire and are guilty of no negligence (*Vaughan v. Taff Rail. Co.* (1860), 5 H. & N. 679).

*Injury to a ferry.*—A railway company, authorised to do so, constructed across a river, half a mile above a ferry, a railway bridge and a foot bridge,

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the latter being used by persons going to the railway station and also to other places. The traffic across the ferry in consequence fell off, and the ferry was given up. It was held that compensation could not be recovered on the ground that the injury to the ferry was occasioned not by the construction, but by the use of the works (*Hopkins v. Great Northern Rail. Co.* (1877), 2 Q. B. D. 224, overruling *R. v. Cambrian Rail. Co.* (1871), L. R. 6 Q. B. 422). In the above case it was also discussed whether the erection of a bridge was a disturbance of the right of ferry; and in this case it was held that as it connected different highways it was not such a disturbance.

## CASES WHERE COMPENSATION RECOVERABLE.

**Access to premises.**—The obstruction by the execution of the works of a man's direct access to his house or land, whether such access be by a public road or by a private way, is a proper subject for compensation, if the value of the house or land has been depreciated.

*By public highway.*—If a public right is invaded, an individual must show that he has suffered damage more than or beyond that of his fellow citizens by reason of the interference with the public right, otherwise he will have no cause of action (*Dobson v. Blackmore* (1847), 9 Q. B. 991; *Irenson v. Moore* (1699), 1 Salk. 15; and see *per Lord PENZANCE* in *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243, p. 263; *Cook v. Mayor of Bath* (1868), L. R. 6 Eq. 177; *Fritz v. Hobson* (1880), 14 Ch. D. 542). In order that an action may lie for damage for right of access by a public road, the damage must be proximate, and not remote or indefinite (*Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259).

Thus, where the lessee of a house in close proximity to a draw dock which opened into the Thames, was in the habit of constantly using the dock, but his right was only as one of the public, and the dock was entirely destroyed by the making of the Thames Embankment, and his premises in consequence were permanently damaged and diminished in value in their then condition and with reference to the uses to which any owner might put them, it was held that he was entitled to compensation (*Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; approving *Chamberlain v. West London Rail. Co.* (1862), 2 B. & S. 605; and *Beckett v. Midland Rail. Co.* (1867), L. R. 3 C. P. 82, *infra*, and distinguishing *R. v. Metropolitan Board of Works* (1869), L. R. 4 Q. B. 358, *supra*, p. 122).

A spinning mill stood ninety yards from and parallel to an important main thoroughfare in Glasgow. Public highways, which were level, afforded direct and easy access from both sides of the premises to the main thoroughfare. A railway company cut off entirely one access and substituted for it a circuitous road with steep gradients; the other access was also made less convenient. The mill-owner was held to be entitled to compensation (*Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259; and see *Wood v. Stourbridge Rail. Co.* (1864), 16 C. B. (N.S.) 222).

The lessee of four houses standing on a highway, and of eight others in course of erection for the purpose of dwelling-houses, on a new road at right angles to the highway, was held entitled to compensation from a railway company who had obstructed the highway and rendered the access less convenient and made the houses less valuable (*Chamberlain v. West End and Crystal Palace Rail. Co.* (1862), 2 B. & S. 605, 617).

Where a house fronting on a public highway is depreciated in value by a railway company erecting an embankment on a portion of the highway opposite thereto, and thereby narrowing the road from fifty to thirty-three feet, and impeding the approach and access of light and air, the owner was held entitled to compensation (*Beckett v. Midland Rail. Co.* (1867), L. R. 3 C. P. 82).

Where a local board raised the level of a street so as to obstruct the entrance to a house abutting thereon and to render the access to the doorway dangerous and inconvenient, the owner was held entitled to compensation under the Public Health Act, 1848, s. 144 (*R. v. Wallasey Local Board* (1869), L. R. 4 Q. B. 351).

And the same principle was applied to a similar state of facts under the Lands Clauses Acts where the level of a footway in a street had been lowered (*R. v. Vestry of St. Luke's, Chelsea* (1871), L. R. 7 Q. B. 148; and see also *R. v. Eastern Counties Rail. Co.* (1841), 2 Q. B. 347; *Mervin v. Liverpool, St. Helens and South Lancashire Rail. Co.*, [1903] 1 K. B. 652).

Where a railway company lowered the level of a highway leaving a cottage and land belonging to an owner on the edge of a precipice seven feet high, so that access could only be got by a ladder, the owner was held to be entitled to compensation (*Moore v. Great Southern and Western Rail. Co.* (1859), 10 Ir. C. L. 46; and for another similar case where the road was raised, see *Tuohey v. Great Southern and Western Rail. Co.* (1859), 10 Ir. C. L. 98; and see *Re McMullen and Ulster Rail. Co.* (1863), Ir. Res. Cas. 36).

Where the Metropolitan Board of Works built a new bridge across a river and made a new highway to the bridge, and closed the old bridge so that the old highway ended at the river side, and shops in that street became, in consequence, less valuable, it was held that the premises were made less valuable, having regard to all the purposes for which such a house might be used, and that there was a right to compensation (*Metropolitan Board of Works v. Howard* (1889), 5 T. L. R. 732 (H. L.); and see *Wadham v. North Eastern Rail. Co.* (1884), 14 Q. B. D. 747; (1885), 16 Q. B. D. 227, and note "Loss of profits," *ante*, p. 121).

*Access to the sea.*—This also is a subject of compensation when a railway company erect an embankment along the foreshore and cut off the access to the sea from a house (*R. v. Rynd* (1863), 16 Ir. C. L. 29; *Attorney-General of the Straits Settlements v. Wemyss* (1888), 13 App. Cas. 192, p. 196).

*Access to river.*—In a case under a different Act it was held that the right of navigating a public river, connected with an exclusive access to and from a particular wharf, constitutes a form of enjoyment of the land and of the river in connection with the land, the disturbance of which may be vindicated in damages by an action (*Lyon v. Fishmongers' Co.* (1876), 1 App. Cas. 662; *North Shore Rail. Co. v. Pion* (1889), 14 App. Cas. 612, applying same principle in Canadian law).

Such a right of access from a river would give, if obstructed, a claim for compensation (*Macey v. Metropolitan Board of Works* (1864), 33 L. J. Ch. 377; *Burclench v. Metropolitan Board of Works* (1872), L. R. 5 H. L. 418).

*Private way.*—Private rights of way and easements of way appurtenant to property, and such rights as would pass on a demise as continuous and apparent easements, are all subjects of compensation.

Thus, where the owner of a farm had a right of way from the farm over various closes to the high road, and a railway company constructed a level crossing over this way and erected gates, the owner was held to be entitled to compensation (*Glover v. North Staffordshire Rail. Co.* (1851), 16 Q. B. 912; and see *Barnard v. Great Western Rail. Co. and Others* (1902), 86 L. T. 798; *School Board for London v. Smith, W. N.* (1895), 37).

The lessees of three rooms in a back block of a house had access thereto through a hall or vestibule. A railway company took down the front block and removed the hall. By reason of the injury to the access the value of the rooms was lessened, but there was no demise of the right of way through the hall, nor was it a way of necessity, but was in the nature of a continuous

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and apparent easement, and the court held that it was a subject for compensation (*Ford v. Metropolitan Rail. Co.* (1886), 17 Q. B. D. 12).

A vendor of property granted a plot of land, together with all streets, ways, easements, and advantages, and delineated on the conveyance a plan showing the piece of land at the corner of two intersecting streets. These streets had not been made, but the soil thereof belonged to the vendor, and was on the same level as the plot. He was held to be liable to the purchaser to lay out these streets, and a railway company who took part of the land and blocked the access to one of these streets was held bound to compensate the purchaser for injuriously affecting his land by blocking this right of way (*Furness Rail. Co. v. Cumberland Co-operative Building Society* (1884), 52 L. T. 144; cf. *Fleming v. Newport Rail. Co.* (1883), 8 App. Cas. 265, where no such right was held to exist, *supra*, p. 120; see also *Wood v. Stourbridge Rail. Co.* (1864), 16 C. B. (N.S.) 222).

*Easements of light.*—These easements, if shown to exist either by prescription or grant, are clearly a subject of compensation. Thus, where premises were rendered less convenient and suitable for the requirements of the trade carried on in them by reason of the diminution of light, the lessee was held entitled to compensation. The report does not say that the lessee had an easement, but BOVILL, C.J., says that upon the facts it is clear that an action might have been maintained (*Eagle v. Charing Cross Rail. Co.* (1867), L. R. 2 C. P. 638, 644; *Emaley v. North Eastern Rail. Co.*, [1896] 1 Ch. 418).

Under the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), it was held that a school board interfering with ancient lights must pay compensation (*Clark v. London School Board* (1874), L. R. 9 Ch. 120).

Compensation was also granted for obstruction of light in *R. v. Poulter* (1887), 20 Q. B. D. 132, and *Re London, Tilbury, and Southend Rail. Co. v. Governor's Walk Schools* (1889), 24 Q. B. D. 326.

As to light, air, and prospect where a foreshore is taken, see *R. v. Rynd* (1863), 16 Ir. C. L. 29.

For cases under a street improvement Act, *Wigram v. Fryer* (1887), 36 Ch. D. 87; *Courage & Co. v. South Eastern Rail. Co.* (1902), 19 T. L. R. 61.

*Breach of covenants.*—If the promoters of an undertaking acquire land which is subject to a covenant, and by the construction of the works they infringe that covenant, then they must pay compensation to the covenantee if, by reason of the breach, his land is injured. The dictum of HANNEN, J., in *Bailey v. De Crespigny* (1869), L. R. 4 Q. B. 180, to the contrary must now be considered as disapproved.

Thus, if land acquired by a school board is subject to a covenant restricting the class of buildings to be erected thereon, and the school board erect a school in contravention thereof, the remedy is by claiming compensation and not by action (*Kirby v. School Board for Harrogate*, [1896] 1 Ch. 437, at pp. 449, 453, 455).

Similarly if land acquired by a railway company is subject to like covenants, the covenantee is entitled to compensation for injury caused by making a railway (*Long Eaton Recreation Grounds Co. v. Midland Rail. Co.*, [1902] 2 K. B. 574).

In that case a railway embankment was held to be a building within the meaning of a covenant against building.

If a person sells or feus a plot of land, part of a building estate, and impliedly binds himself to lay out certain streets and roads on the remainder of the land, and if a railway company by taking the land render the laying out of these streets an impossibility, then they will be liable to pay compensation for any injury occasioned thereby to the owners of the plots (*Furness*

*Rail. Co. v. Cumberland Building Society* (1884), 52 L. T. 144; *Fleming v. Newport Rail. Co.* (1883), 8 App. Cas. 265, p. 278). In the former of these cases Lord BLACKBURN said that it did not matter whether the right interfered with was one enforceable at law or in equity; the interference in either case would be an actionable wrong giving rise to a right to compensation.

The breach of a covenant for quiet enjoyment by a railway company which had purchased a reversion, would give the lessee the right to compensation for injury occasioned thereby, although apart from the covenant there would be no actionable wrong (*Manchester, Sheffield, and Lincolnshire Rail. Co. v. Anderson*, [1898] 2 Ch. 394, p. 401).

If a lessee has power under his lease to exercise a right to sink a shaft in other land not leased to him in order to win coal, and part of that land is taken, then he will be entitled to claim compensation if he suffer damage by reason of his being deprived of that right (*In re Masters and the Great Western Rail. Co.*, [1901] 2 K. B. 804).

If a restrictive covenant limits the use to which land may be put, as by requiring that no noisy or offensive trade be carried on upon it, then it would seem that compensation might be recovered for breach of the covenant, although the breach would be occasioned not by the construction of the works, but by reason of the carrying on of the undertaking (*Long Eaton Recreation Grounds Co. v. Midland Rail. Co.* (1902), 71 L. J. K. B. 74; affirmed on appeal [1902] 2 K. B. 574; and *Kirby v. Harrogate School Board*, [1896] 1 Ch. 437).

**Ferry.**—A ferry appurtenant to land is a proper subject for compensation, and if the works of a railway block up the access to the river at one side of the ferry, the land is injuriously affected (*R. v. Great Northern Rail. Co.* (1849), 14 Q. B. 25; cf. *Hopkins v. Great Northern Rail. Co.* (1887), 2 Q. B. D. 224, cited p. 124, *supra*).

**Flow of water.**—This right of riparian owners is a subject of compensation if the flow is interrupted. Thus, where the flow was diminished, the lands were held to be injuriously affected (*Mortimer v. South Wales Rail. Co.* (1859), 1 E. & E. 375). Under a private Act where a company, by altering a weir in a river, raised the level of the water so that the working of the mill was obstructed, the millowner was held entitled to compensation (*R. v. Nottingham Old Waterworks Co.* (1837), 6 A. & E. 355). Where the owner was deprived of the flow altogether by being cut off from it, see *Duke of Buccleuch v. Metropolitan Board of Works* (1872), L. R. 5 H. L. 418. For the taking and using a stream under the Waterworks Clauses Act, 1847 (see *post*), the procedure is the same as for taking lands (*Ferrand v. Corporation of Bradford* (1856), 21 Beav. 412, and see notes to that statute, *post*). Where only part of the water is diverted, the owner is injuriously affected, and the procedure is under s. 68 (*Bush v. Troubridge Waterworks Co.* (1875), 10 Ch. D. 459; *Stone v. Mayor of Yeovil* (1876), 2 C. P. D. 99). And if part of the water is taken but the bulk of it returned, riparian owners below where it is returned can only claim for the actual diminution (*Page v. Kettering Waterworks Co.* (1892), 8 T. L. R. 228).

**Sporting rights.**—It is not always clear as to whether the right to shoot game upon land is merely a licence or an interest in land. If the right is coupled with a right to take away the whole or part of the game shot, then it is an interest in land, being a profit à prendre (*Webber v. Lee* (1882), 9 Q. B. D. 315; *Wickham v. Hawker* (1840), 7 M. & W. 63; *Fitzgerald v. Firbank*, [1897] 2 Ch. 96). It should in such a case be created by deed (*Bird v. Higginson* (1837), 6 A. & E. 824), but if by parol, coupled with exercise of the right, equity would enforce it (*Pattison v. Gilford* (1874), L. R. 18 Eq. 259); and as to what is a reasonable notice to determine an agreement for shooting, see *Love v. Adams*, [1901] 2 Ch. 598.

It has, however, been held that a person who had a right of shooting over

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land by an agreement not under seal had not such an interest in land as to entitle him to compensation for injuriously affecting his right from a railway company who had constructed a railway across it (*Bird v. Great Eastern Rail. Co.* (1865), 34 L. J. C. P. 366). This decision was mainly based on the ground that the claimant showed no more than a licence.

*Support.*—If an Act of Parliament imposes an easement upon a landowner this is ground for compensation. Thus, the Public Health Act, 1875 (38 & 39 Vict. c. 55), has been held to impose upon landowners through whose land a sewer runs a duty to preserve to such sewer adjacent support, and, therefore, gives them a right to immediate compensation (*In re Corporation of Dudley* (1881), 8 Q. B. D. 86; see *North London Rail. Co. v. Metropolitan Board of Works* (1859), 28 L. J. Ch. 909). As to support from mines, see the Railways Clauses Act, 1845, s. 79, *post*, and note "Support," and see the Waterworks Clauses Act, 1847, ss. 18—27, which, as regards sewers, are incorporated in the Public Health Act, 1875, by the Public Health Act, 1875, Amendment Act, 1883 (46 & 47 Vict. c. 37).

*Flooding.*—If by the proper execution of the works an owner's land is occasionally flooded, his remedy is for injurious affection under s. 68 (*Ware v. Regent's Canal Co., per Lord CHELMSFORD*, (1858), 3 De G. & J. 212, 227).

**Tithes** consisted of the tenth part of the produce, animal and vegetable, of land. By the Tithe Act, 1836 (6 & 7 Will. 4, c. 71), which has been amended by numerous statutes, provision was made for commuting all tithes into tithe rentcharges. In an old case before this commutation Act, it was held that a tithe-owner was not entitled to compensation where titheable land was taken for purposes of navigation and covered with water on the ground that the tithe-owner has no interest in the land, but his interest accrues when the tithe arises, and the owner of the soil may, if he pleases, use the land in such a manner that no tithe may arise (*R. v. Commissioners of the Nene Outfall* (1829), 9 B. & C. 875).

The commutation Act, however, does not alter the nature of the tithe, and although it provides for a certain sum being made payable instead of the tithes, which sum is to be "in the nature of a rentcharge issuing out of the lands charged therewith," this does not create a rentcharge on the inheritance, but merely gives tithe-owners the right to take out of the produce of the land the proportion mentioned in the Act (*Bailey v. Badham* (1885), 30 Ch. D. 84). It might, on that reasoning, appear doubtful whether ss. 115—118 of this Act, which provide for the compensation of rentcharges are applicable to the case of tithe rentcharges. By 41 & 42 Vict. c. 42, it is provided that "in all cases where land charged with rentcharge in lieu of tithes is taken" for the purpose of building or extending churches, schools under the Elementary Education Act, cemeteries, public buildings or artisans' dwellings, the tithe shall be redeemed for a sum of money twenty-five times the amount of the rentcharge (s. 1, *post*).

Tithes imposed on the inhabitants of the city of London under 37 Hen. 8, c. 12, were held to be annuities or periodical sums of money charged upon land (*Payne v. Esdaile* (1888), 13 App. Cas. 613). And see *Esdaile v. Esdaile* (1886), 54 L. T. 637.

For cases of compensation under 37 Hen. 8, c. 12, where the special Act made provision that they should indemnify the owner of the tithes, see *Esdaile v. Metropolitan and District Rail. Co.* (1881), 46 J. P. 103; *London and Blackwall Rail. Co. v. Letts* (1851), 3 H. L. Cas. 470.

**The measure of compensation.**—The general rules as regards the measure of damages in *tort* are applicable to determine the amount of compensation for injurious affection. The damage must be the natural and probable consequence of the act: it must be the proximate and not remote

(*Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259; *Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175).

Thus, a local board, for the purpose of making a drain, entered upon ground where a seedsman had an experimental garden, in which he sowed small quantities of the seeds he sold by way of sample from each lot of seed he had in stock, and, according to the results, was able to warrant each parcel sold, and, in consequence, get a higher price. The plants in the garden were grubbed up and so treated that they could not be identified with the seed in bulk, which could not, therefore, be warranted and sold at the higher price. The court, with hesitation, held that the damage was too remote to be a subject for compensation (*Re Clarke and Wandsworth Board of Works* (1868), 17 L. T. 549). As to what may be taken into account in assessing the compensation for a market garden, see *Lanarkshire and Dumbartonshire Rail. Co. v. Main* (1895), 22 Rettie, 912.

Damages more remote than in the cases of tort may be the subject of compensation if there is special provision in the special Act; thus, in one case under a special Act, where a towing path was rendered useless by a new channel being cut, the owner of the path, who also let out horses to be used on it, was given compensation (*R. v. Commissioners of Thames and Isis Navigation* (1836), 5 A. & E. 804).

*Easements.*—There are, however, one or two points as to the measure of compensation which are not quite clear. Thus, when an easement or right appendant or appurtenant to land, as distinguished from a public highway, is destroyed, compensation has, whether rightly or wrongly, been assessed on the same principle as where lands have been taken (see note to s. 63) and consequential damages allowed. Thus, where ancient lights were obscured, compensation was allowed both for the loss of light caused thereby and also for the loss caused by obscuring lights which were not ancient by the same works, the court following the principle laid down in *Coeper Essex v. Acton Local Board* (1889), 14 App. Cas. 153, and *Buccleuch v. Metropolitan Board of Works* (1872), L. R. 5 H. L. 418, for ascertaining the damage to lands held with the land taken (*In re London, Tilbury, and Southend Rail. Co. and Gower's Walk Schools* (1889), 24 Q. B. D. 326). And see *Long Eaton Recreation Grounds v. Midland Rail. Co.* (1901), 71 L. J. K. B. 74; affirmed on appeal, [1902] 2 K. B. 574.

In an older case (*Glover v. North Staffordshire Rail. Co.* (1851), 16 Q. B. 912), where a private road was obstructed by a level crossing, CAMPBELL, C.J., and ERLE, J., thought that the passing of trains was also ground for compensation. In *Buccleuch v. Metropolitan Board of Works* (1872), L. R. 5 H. L. 418, the rights destroyed were incorporeal, but it cannot be taken as laying down this proposition owing to the particular provisions of the special Act.

In a case where there was structural damage to a house, the arbitrator was held rightly to have allowed compensation not only for the loss in the value of the house, but also for loss occasioned to goods in the house (*Knock v. Metropolitan Rail. Co.* (1868), L. R. 4 C. P. 131).

*Public highways.*—The rule for determining whether a right of compensation exists in the case of public highways apparently indicates the rule by which the compensation is to be measured. The damage must be one which is sustained in respect of the property itself, and not in respect of any particular use to which it may from time to time be put. It must be less valuable for all purposes. WILLES, J., in *Beckett v. Midland Rail. Co.* (1867), L. R. 3 C. P. 82, p. 95, considered that this meant that the property is "to be taken *in statu quo*, and to be considered with reference to the use to which any owner might put it in its then condition"—if a house, then as a house. The owner, he thought, is not to be expected to pull it down in order to use the land for agricultural purposes. The point was to

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some extent raised in *In re Wadham and North Eastern Rail. Co.* (1884), 14 Q. B. D. 747; (1885), 16 Q. B. D. 227. In that case the property in dispute was an hotel and public-house, and the arbitrator held that of all purposes to which the property might be put, the purpose of an hotel was the most valuable, and the court allowed the compensation to be assessed on its depreciation in value as such. Lord HERSCHELL, in a short report of *Metropolitan Board of Works v. Howard* (1889), 5 T. L. R. 732, speaking of the compensation to be given to the owner of a public-house, where the highway had been altered, said: "If a house were rendered less accessible to customers, that might diminish the value of the house for all purposes, although the evidence which was given with reference to the actual loss of trade and the decreased number of years purchase it would fetch on sale, ought not to have been admitted."

It would appear, therefore, that if owing to alterations in a highway a building is decreased in value for the purpose for which it is used, but that its market value is not decreased by reason of the obstruction if used for some other purpose, then that possibility of use for that other purpose is to be taken into account in assessing the compensation. It does not appear, however, that if by reason of the obstruction the value is lowered, but by reason of the improvement of the neighbourhood due to the works the value is raised for some other purpose, that the enhanced value is to be taken into account (*cf. Senior v. Metropolitan Rail. Co.* (1863), 32 L. J. Ex. 225; *Eagle v. Charing Cross Rail. Co.* (1867), L. R. 2 C. P. 638). And see s. 63, note, "Betterment," *ante*, p. 108.

*Future damages.*—As regards all damages that can be foreseen, they ought to be included in the assessment of the compensation. It seems clear that, as far as foreseen damages go, the inquiry and compensation are to be made once for all, and if any damage afterwards occurs which might have been foreseen no compensation in respect thereof can be recovered either under the Lands Clauses Act or by action (*Croft v. London and North Western Rail. Co.* (1863), 32 L. J. Q. B. 113). The claimant must bring forward his claim in unity, as far as he can foresee the damages, estimating them as having as much permanency as the undertaking. See *per* ERLE, C.J.: *Chamberlain v. West End of London and Crystal Palace Rail. Co.* (1863), 2 B. & S. 617, 639. Contingent damages may apparently also be taken into consideration, although they may never arise (*In re Brogden and Llynvi Rail. Co.* (1860), 30 L. J. C. P. 61).

Where promoters have power to divert the whole of a stream but only divert part, but give notice of their intention to take the whole, they ought to pay compensation for the whole value of the stream and not merely compensate them from time to time for injuriously affecting the property of the riparian owners (*Stone v. Corporation of Yeovil* (1876), 2 C. P. D. 99).

In *Lawrance v. Great Northern Rail. Co.* (1851), 16 Q. B. 643, PATTESON, J., in delivering the judgment of the court, expressed a strong opinion that the compensation did not embrace damages which could neither be foreseen nor guessed at by the arbitrator, but judgment was given in that case on the ground that the company had not carried out their works with proper caution.

There is no provision in the Lands Clauses Act permitting a second assessment, and there is no provision to the contrary. There has been no decision as to whether a second assessment can be made or not for a wholly unforeseen damage, although the subject has been discussed in several cases (*Croft v. London and North Western Rail. Co.* (1863), 32 L. J. Q. B. 113; *Regent's Canal Co. v. Ware* (1854), 23 L. J. Ex. 145; *Lancashire and Yorkshire Rail. Co. v. Evans* (1851), 15 Beav. 322).

In *Mercer v. Liverpool, St. Helens and South Lancashire Rail. Co.*, [1903]

1 K. B. 652, it was held that a lessee of land from which a part had been severed prior to the lease, could not recover compensation for injurious affection, although the owner [had previously been served with a notice to treat in respect of the severed land and subsequently received compensation in respect of all damage caused by reason of the severance or other injurious affection of the vendor's other property, a decision the correctness of which may be doubted. The case of *Croft v. London and North Western Rail. Co.*, *supra*, was approved.

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If after one assessment further damage is caused by new works not carried out at the time of the assessment, but at some future or subsequent time, compensation would no doubt be allowed in respect of such further damage (*Lancashire and Yorkshire Rail. Co. v. Evans* (1851), 15 Beav. 322; *Stone v. Corporation of Yeovil* (1876), 1 C. P. D. 691; (1876), 2 C. P. D. 99; *Attorney-General v. Metropolitan Rail. Co.*, [1894] 1 Q. B. 384).

And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows : (a)

(a) As to the effect of the headings, see notes to s. 5. The sections under this heading are ss. 69—80.

69. If the purchase money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the bank, in the name and with the privity of the Accountant-General of the Court of Chancery [*in England if the same relate to lands in England or Wales, or the Accountant-General of the Court of Exchequer in Ireland if the same relate to lands in Ireland*] (a) to be placed to the account there of such Accountant-General, ex parte the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it), pursuant to the method prescribed by any Act for the time being in force for regulating moneys paid into the said courts; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say,)

Purchase money payable to parties under disability amounting to £200 to be deposited in the bank.

In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other

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lands settled therewith to the same or the like uses, trusts, or purposes ; or

In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled ; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by proximity of the works, in removing or replacing such buildings or substituting others in their stead, in such manner as the Court of Chancery shall direct ; or

In payment to any party becoming absolutely entitled to such money.

(a) These words have been repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

**"And not entitled to sell," etc.**—Section 7 confers power on persons under disability to sell and convey. Many of the classes of persons mentioned in that section have now power to sell under other Acts. This section only applies to the classes of persons named if they sell and convey under the provisions of this or the special Act (see notes to s. 7). Persons having power to sell under this Act and also under other Acts, such as the Settled Land Acts, and who contract to sell under this Act, are entitled to proceed under this Act, and have the costs of reinvestment paid by the promoters (*In re Lady Bentinck and London and North Western Rail. Co.* (1895), 12 T. L. R. 100), and they are not bound to receive the money, although with certain consents they might do so (*In re Leeds Grammar School*, [1901] 1 Ch. 228).

**Corporation.**—Under the similar provisions in the Scotch Act, the word "corporation" was held not to extend to a railway company, as they were not considered to be a corporation within the meaning of the statute (*Caledonian Rail. Co. v. City of Glasgow Union Rail. Co.* (1869), 3rd ser. 7 Macph. 1072, 1074, but with this KAY, J., did not agree in *Re Chelsea Waterworks Co.* (1887), 56 L. T. 421). As to municipal corporations, see s. 15 of this Act, *ante*, p. 26.

In *Kelland v. Fulford* (1877), 6 Ch. D. 491, p. 494, JESSEL, M.R., in 1877, in considering to what cases this section applied, said : "It applies to purchase money or compensation in respect of lands taken from, first, a corporation which, not being beneficially entitled, has no power of sale, or which, being under some statutory disability, cannot sell ; then a tenant for life or in tail, that is, a tenant in tail incapable of selling, as, for instance, where estates are settled and made inalienable by Act of Parliament and a tenant in tail who is prevented by law from selling, as, for instance, a tenant in special tail after possibility of issue extinct, who for all purposes of alienation is considered merely as a tenant for life. Then, again, a married woman seised in her own right or entitled to dower, who cannot sell except with the concurrence of her husband, they being together owners in fee ; then a guardian or committee, neither of whom can sell for himself ; then a trustee, executor, or administrator, who may have the entire fee simple like a corporation, and yet may not be able to sell."

**"Tenants for life," etc.**—Tenants for life are now by ss. 3, 4 of the *Settled Land Act*, 1882, empowered to sell the settled land ; and as to selling the mansion, house, and park, see s. 10 of the *Settled Land Act*, 1890. By s. 58 of the 1882 Act, a tenant in tail after possibility of issue extinct, and

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also a tenant in tail restrained by Act of Parliament from having the reversion, have the powers of a tenant for life. The court, under s. 3 of that Act, sanctioned a sale by a tenant for life of the right to make, maintain, and use a tunnel for an electric railway under his land, that being a sale of land and not of an easement (*In re Pearson's Will* (1900), 83 L. T. 62). A tenant for life is, however, authorised to sell easements, and under s. 5 of the Act of 1890 he may exchange one easement for another (*In re Bracken's Settlement*, [1903] 1 Ch. 265). As to the power of a tenant for life to sell with a covenant binding his successors, see *Palmer v. Grand Junction Water-works Co.* (1902), 86 L. T. 352.

Section 22 of the Act provides that capital money arising under that Act shall in order to its being invested or applied as provided in the Act, be paid either to the trustees of the settlement or into court, at the option of the tenant for life. In order, however, that he can exercise that option, there must be trustees of the settlement in existence. If they do not exist they should be appointed (*Hatten v. Russell* (1888), 38 Ch. D. 334, 345). When money is paid into court under the Lands Clauses Act, in respect of land which is the subject of a settlement, it may be applied as provided by the Settled Land Acts, 1882—1890. See *infra*, p. 142.

**Executors.**—Where a landowner agreed to sell land to a company and died before the conveyance was completed, the company were held not entitled to pay the money into court inasmuch as the contract was made with the landowner and not with the executors, and that the section applied when the company were dealing with executors having a partial interest only (*Newton v. Metropolitan Rail. Co.* (1861), 8 Jur. (N.S.) 738). If paid into court, it would go to the executors as personal estate (*Ex parte Hawkins* (1843), 13 Sim. 569). Where executors have a power of sale, but no other interest in land, they cannot grant an easement (*In re Barrow-in-Furness and Rawlinson's Contract*, [1903] 1 Ch. 339).

**"The sum of £200."**—Under the Light Railways Act, 1896, *post*, this sum may be raised to £500. As to sums under £200, see ss. 71, 72 *infra*.

**"Accountant-General."**—The office of Accountant-General to the Court of Chancery in England and Wales was abolished by the Court of Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44, s. 4), and moneys to be paid in his name and privy were to be paid with the privy of the Paymaster-General on behalf of the Court of Chancery (s. 6). By the Judicature Act of 1873 (36 & 37 Vict. c. 66, ss. 3, 31), the High Court of Chancery became the Chancery Division of the High Court of Justice, retaining the exclusive jurisdiction of the Court of Chancery under Acts of Parliament (s. 34). By the Supreme Court of Judicature (Funds, etc.) Act, 1883 (46 & 47 Vict. c. 29), one accounting department was made for the Supreme Court, and moneys will now be paid in with the privy by his Majesty's Paymaster-General for and on behalf of the Supreme Court of Judicature.

**"Shall be paid into the bank."**—The bank means the Bank of England when the lands are situated in England. Definition (s. 3), *ante*, p. 5.

If the promoters do not pay the amount into the bank, a *mandamus* will lie to compel them; and the *mandamus* could be obtained in an action under s. 68 of the Common Law Procedure Act, 1854 (*Barnett v. Great Eastern Rail. Co.* (1868), 18 L. T. (N.S.) 408). Order 53 of the Rules of the Supreme Court is of similar effect. As to *mandamus*, see note to s. 21, *ante*, p. 47, and Appendix.

Where promoters paid the money to a corporation directly, under pressure and upon protest, the corporation were ordered to pay such money as there remained in their hands into the court. The order was made upon motion

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by the promoters in a suit against the corporation (*London and North Western Rail. Co. v. Corporation of Lancaster* (1851), 15 Beav. 22).

In some cases where the parties have apparently consented, the court has allowed the money to be invested without being paid into court.

Thus in a case where the purchase money, which ought to have been paid into court was paid to the tenant in tail of the land, the court allowed it to be laid out in the purchase of land dispensing with the payment into court. (*In re London, Brighton, and South Coast Rail. Co., Ex parte Earl of Abergaremy* (1856), 4 W. R. 315).

Similarly, where land belonging to a lunatic had been purchased by a railway company under their Act, an order was made for payment of the purchase money to the credit of the lunacy and for its investment in the joint account of the lunatic and the company, without its being paid into court, subject to the company declaring themselves satisfied with the title to the land (*In re Milnes* (1875), 1 Ch. D. 28). The application in such a case must be instituted in the Chancery Division as well as in Lunacy (S. C.).

In that case, JAMES, L.J., expressed the opinion that this section was only a direction for the safe custody of the purchase money and that compliance with its provisions was not necessary to make a good title to the promoters (*ibid.*, at p. 29).

**"Prescribed by any Act for the time being in force."**—The Act at present in force is the Court of Chancery (Funds) Act, 1872, as amended by the Supreme Court of Judicature (Funds) Act, 1883, and by s. 6 of the Supreme Court of Judicature Act, 1894.

## PROCEDURE ON PAYMENT IN.

When the office of the Paymaster-General is closed, see as to procedure, s. 88, *infra*.

The procedure in the Paymaster-General's office is regulated by the Supreme Court Funds Rules, 1894. The procedure for applications for investment and payment out will be found in the notes to s. 70, *post*. The rules as to lodgment or payment in which are material are as follows :

30. . . . A lodgment of funds in court not directed by an order may be made upon a direction to the bank or other company, to be issued by the paymaster on a request signed by or on behalf of the person desiring to make such lodgment: Provided that no such lodgment shall be placed in the pay office books to a separate account in a cause or matter (except to a security for costs account) unless an order has directed such separate account to be opened.

The request for a direction under this rule shall state the name of the person by or on whose behalf the funds are to be lodged, the ledger credit in the pay office books to which the funds are to be placed, and the date of the authority or certificate (if any) in pursuance of which the funds are to be lodged.

In cases of funds to be lodged in pursuance of the Lands Clauses Consolidation Act, 1845 . . . the further particulars required under rules 39 and 40 shall be stated in the request . . .

Except in the cases next mentioned, the requests under this rule shall be in the Forms No. 8 (for money) and No. 9 (for securities), in the Appendix to these rules.

**FORM No. 8.**

[Request for Lodgment of Money in Chancery Division, referred to in Rule 30.]

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**NOTE.**

**High Court of Justice, Chancery Division.**

### I.—REQUEST FOR DIRECTION FOR LODGMENT.

Title of cause or matter	r.	19	A. No.
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Ledger Credit to ( [If same as title of cause, state as above.]  
which lodged. )

**Further particulars (if any) required to be stated.**

The paymaster is hereby requested to issue a direction to the bank to receive from \_\_\_\_\_ the sum of £ \_\_\_\_\_ for the ledger credit in the books of the pay office above specified.

**(Signature)**

## II.—PAYMASTER'S DIRECTION FOR LODGMENT.

**To the Agent of the Bank of England (Law Courts Branch).**

Please receive the above-stated sum and place it to the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature.

(Signature)

(Date)

19 .

### III.—BANK CERTIFICATE OF RECEIPT.

To the Assistant Paymaster-General, Bank of England, 19

The above-stated sum has been this day received.

(Signature)

By r. 3 of the Supreme Court Funds Rules, "funds" or "funds in court" means any money, government stock or annuities, or other securities or any part thereof standing or to be placed to the Pay Office Account in the books of the Bank of England or any other company, and includes boxes and other effects.

"Lodgment in court" means payment or transfer into court or deposit in court.

35. A request or authority for the issue by the paymaster of a direction for the lodgment of funds in court may be sent to the paymaster by post, and, if so desired by the person sending the same, the paymaster shall send such direction by post to the address specified by such person.

39. Money lodged in court in the Chancery Division pursuant to the 69th section of the Lands Clauses Consolidation Act, 1845, in respect of lands in England or Wales, shall be placed in the books at the pay office to the credit of ex parte the promoters of the undertaking, in the matter of the special Act (citing it), and some words shall be added in each case briefly expressive of the nature of the disability to sell and convey, by reason of which the money shall be so paid in, which particulars shall be stated in the request for the direction for the lodgment.

Money may be lodged in court under the Lands Clauses Consolidation Act under ss. 69, 71, 75, 76, 85, 86, 97, 107, 109, 111, 113. On applying

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for a direction for lodgment, the section should be stated under which the money is to be lodged, and there should be a short statement of the reason for such payment in, and, where necessary, the request should state how the amount has been determined. A King's printer's copy of the special Act should also be sent or produced (Daniel's "Chancery Practice," 1483, 1828).

**"Moneys shall remain so deposited until . . . applied."**—As to its investment until applied, see s. 70, *post*, p. 152, and notes thereto.

Money paid into court under this section is for purposes of descent constructively reconverted into realty until some person becomes absolutely entitled, when he can stop the reconversion. Until that event happens, the money is to be laid out in lands or buildings to stand limited to the same uses as the lands sold stood limited, and, therefore, must be considered as land. Thus purchase money paid into court for land, of which an infant was absolutely seised in fee, remains impressed with the character of real estate, and on the death of the infant, descends to his heir-at-law (*Kelland v. Fulford* (1877), 6 Ch. D. 491; *Dearberg v. Letchford* (1895), 72 L. T. 489).

Under special Acts similar decisions have been given. As to a lunatic's property under a special Act, see *Midland Counties Rail. Co. v. Osrin* (1844), 1 Coll. 80. But under this Act, Lord CRANWORTH held that money paid into court under s. 78 by a railway company for land taken from a person who was in a state of mental imbecility and continued in that state till his death, but who had not been the subject of a commission of lunacy, was not to be treated as realty but as personalty and be paid to the executors (*In re East Lincolnshire Railway Act*, (1851), 1 Sim. (N.S.) 260). And see *Re Harrop's Estate* (1857), 3 Drew, 726, 733.

Under a special Act, with sections substantially the same as the Lands Clauses Act, it was held that the money paid into court under a section similar to s. 69 was to be considered as realty. The money was for the purchase of real estate to a share of which an infant was entitled as a vested remainder. Before the estate came into possession he was convicted of felony. The money being treated as realty was held not to be forfeited to the Crown (*Re Harrop's Estate* (1857), 3 Drew, 726).

Where the fund had been overlooked for some years, it was held that the principal fund passed as real estate and the accumulations as personal estate (*Wright v. Dixie* (1863), 32 Beav. 662).

A married woman would apparently be entitled to dower out of the money. See *Re Wilts, Somerset and Weymouth Rail. Co.* (1865), 2 Dr. & Sm. 552.

As to cases where the land taken was under a settlement and was held not converted into personalty under special Acts, see *Re Taylor's Settlement* (1852), 9 Hare, 596; *Re Robertson* (1857), 26 L. J. Ch. 349; *Re Skeggs* (1865), 2 De G. J. & S. 533; *Re Stewart, Ex parte Cramer* (1852), 1 Sm. & Giff. 32.

## APPLICATION OF MONEYS DEPOSITED.

For the procedure, see s. 70, *post*, p. 152, and notes.

The methods of application have been considerably extended in respect of money paid into court, in respect of lands which are the subject of a settlement by the Settled Land Acts, 1882—1890. As the money may be applied in the same way as capital money under these Acts it is proposed to deal with the application of the moneys first under this section, and then under the Settled Land Acts, *post*, p. 142, and then with the payment out to persons absolutely entitled.

## I. APPLICATION UNDER THIS SECTION.

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NOTE.

**Land tax.**—In the case of *In re Lee and Hemingway* (1883), 24 Ch. D. 669, the money paid in under a special Act, was ordered to be paid to trustees of a will, they undertaking to apply it in the redemption of land tax affecting other property vested in them as such trustees.

Under a similar provision in a special Act, a tenant for life who had out of his own moneys redeemed the land tax on parts of the settled estates prior to the passing of the special Act was allowed to reimburse himself out of the proceeds of the lands purchased by the company (*Ex parte Northwick* (1834), 1 Y. & C. Ex. 166).

The land tax on lands purchased under this section may also be redeemed (*Re the Vicar of Queen's Camel* (1863), 8 L. T. (N.S.) 233).

As to redemption of land tax, see Finance Act, 1896 (59 & 60 Vict. c. 28), s. 32.

**"Discharge of any debt or incumbrance."**—The expression "debt or incumbrance," has been construed widely, but it must affect the land or land settled therewith, and must be in the nature of a debt affecting the inheritance.

Thus it has not been allowed to be applied to the following purposes :

Purchase money for a portion of a glebe may not be applied for the restoration of the chancel of the church, or in paying off the money borrowed from the governors of Queen Anne's Bounty (*In re Louth and East Coast Rail. Co., Ex parte Rector of Grimoldby* (1876), 2 Ch. D. 225).

Nor in the payment off of a rentcharge on the glebe lands payable by instalments, which probably did not affect the inheritance, but only the interest of the rector for the time being (*Ex parte Rector of Kirsmeaton* (1882), 20 Ch. D. 203). Nor in paying off advances under the Drainage Act, 1842 (5 & 6 Vict. c. 89), repayable by instalments by the tenant for life. The fund in court represents the corpus of the property (*In re Commissioners of Public Works* (1856), 6 Ir. Ch. 53).

In a case, however, of land originally conveyed under the Church Building Acts, and taken under this Act, the court allowed the money to be devoted to paying off a mortgage granted to the governor of Queen Anne's Bounty for money borrowed to build a vicarage house, and the residue to be paid to the vicar for repairs of the church. This was done by virtue of s. 19 of the Church Building Act, 1840 (3 & 4 Vict. c. 60), and with the consent of the donor of the land (*Ex parte London County Council, Ex parte Vicar of Christchurch, East Greenwich*, [1896] 1 Ch. 520).

As to paying corporation debts under provisions of a special Act, see *Ex parte Hythe* (1840), 4 Y. & C. 55; and *In re Dublin, etc. Rail. Co.* (1884), 13 L. R. Ir. 479.

The money has been allowed to be applied to the following purposes, as debts or incumbrances affecting the land or affecting other lands settled therewith.

**Mortgage.**—Where land had been taken from a corporation, the purchase money was allowed to be used to pay off indentures of mortgage secured on certain tolls which were ancient franchises. It was also allowed to pay off bonds given for money borrowed under the Baths and Washhouses Act, 1846 (9 & 10 Vict. c. 74), the interest on which had been paid out of the borough fund which was largely comprised of the rents and profits of the real estates of the corporation (*In re Derby Municipal Estates* (1876), 3 Ch. D. 289).

Under a special Act, with a provision similar to s. 69, the money was allowed to be applied to the payment of a mortgage on other lands belonging to a corporation (*Ex parte Corporation of Cambridge, Re Eastern Counties Rail. Co.* (1848), 5 Rail. Cas. 204).

It may be used to pay off a mortgage on other lands settled to similar

**Sect. 69.** uses (*Re Dublin, Wicklow, etc. Rail. Co., Ex parte Richards* (1890), 25 L. R. Ir. 175).

**NOTE.**

*Leaseholds.*—Where lands let on long leases have improved in value, so that the lands could be let at increased rents, corporations, having the reversions of such leases, will be allowed to apply money deposited in court as the price of other lands belonging to them, to purchasing the surrender of these leases (*Ex parte Corporation of Sheffield* (1855), 25 L. J. Ch. 587).

And, similarly, where the land is wanted by the corporation for improvements, and the reversion is in the corporation, money deposited in respect of other lands taken by public companies may be applied to purchasing the leaseholds (*Ex parte Corporation of London* (1868), L. R. 5 Eq. 418).

Where land belonging to an episcopal see had been taken, the moneys were allowed to be used to buy up a lease of other lands of the see (*Ex parte Bishop of London* (1860), 2 De G. F. & J. 14).

A tenant for life has been allowed to purchase a surrender of a lease (*Re Townshend's Estates* (1882), W. N. 7).

*Rents.*—Where a lessor had his interest taken and at the date of the award, and before the company took possession, rent was due and unpaid, and the lessor had a right of re-entry in consequence, it was held that the right of re-entry was an incumbrance on the leasehold interest (*Re London Street, Greenwich* (1887), 57 L. T. 673).

The money may be applied to redeeming an annual quit-rent (*Commissioners of Public Works* (1856), 6 Ir. Ch. 53).

It may also be applied to redeeming tithe rentcharges issuing out of lands devised to the same uses as the land in respect of which the money is paid (*In re Commissioners of Church Temporalities in Ireland, Ex parte Lord Leconfield* (1874), I. R. 8 Eq. 559).

But where a perpetual tithe rentcharge had been ordered to be merged, and a sum in lieu thereof, to be paid for a period of fifty-two years, the court refused to allow the money to be applied to the redemption of this charge (*In re Dublin, Wicklow, etc. Rail. Co., Ex parte Tottenham* (1884), 13 L. R. Ir. 479).

*Statutory charges.*—A tenant for life was allowed to apply the money to reinstating structures as required by the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122); for if not reinstated, they were liable to be sold (*In re Davis's Estate* (1858), 3 De G. & J. 144).

The money may be applied to paying off expenses charged on allotments under Inclosure Acts (*Ex parte Queen's College, Cambridge* (1849), 14 Beav. 159, note).

So, also, it may be applied to fencing such allotments when the Act allows part of the allotment to be sold for the purpose of raising money to fence (*Ex parte Lockwood* (1851), 14 Beav. 158).

And where under the General Inclosure Act, 1845 (8 & 9 Vict. c. 118), ss. 16, 133, a tenant for life had power to mortgage the inclosure for the purpose of meeting the expenses connected therewith, but had died without having done so, it was held that the sums expended were a charge on the allotments, and the deposited money might be applied by the trustees to pay those expenses (*Vernon v. Earl Manners* (1862), 11 W. R. 133).

The money may also be applied in paying off charges for improvements under the Settled Land Act (*Ex parte Vicar of Castle Bytham*, [1895] 1 Ch. 348, and cases cited *post*, in note "Application of moneys under the Settled Land Acts").

"In the purchase of other lands."—*Copyholds.*—It was doubted by KNIGHT BRUCE, V.-C., whether this section authorised the purchase money arising from freehold land to be invested in copyhold, but he allowed it to

be so applied on the master having reported that it would be for the benefit of all persons interested (*In re Cuni's Estate* (1849), 19 L. J. Ch. 376).

In a later case where the lands taken were both copyhold and freehold, part of the purchase money was allowed to be spent in purchasing other copyhold land in the same manor (*Re Broune and Orford, etc. Railway Acts* (1852), 6 Rail. Cas. 733).

If copyhold lands are taken the money may be laid out in the purchase of other copyholds (*Re Eastern Counties Rail. Co., Ex parte Vicar of Sawston* (1858), 27 L. J. Ch. 755).

Where copyholds and freeholds are settled on the same trusts the moneys paid in for the purchase of the freeholds, may be applied to the enfranchisement of the copyhold. An enfranchisement of copyholds is equivalent to reinvestment in other lands (*In re Cheshunt College* (1855), 3 W. R. 638; *Dixon v. Jackson* (1856), 25 L. J. Ch. 588).

Under the Liverpool Dock Acts, money paid into court for the purchase of leaseholds was allowed to be laid out in copyholds of inheritance (*In re Coyte's Estate* (1851), 1 Sim. (N.S.) 202).

**Leaseholds.**—The purchase money of freehold land cannot, as a general rule, be invested in leasehold property (*Ex parte Macauley, Re Lancashire and Yorkshire Rail. Co.* (1854), 23 L. J. Ch. 815).

Such an investment was allowed where the land taken belonged to a college, and the leasehold to be purchased had 977 years to run, and was a brickfield adjoining a vicarage and causing a nuisance, the living belonging to the college (*Ex parte Trinity College, Cambridge* (1868), 18 L. T. 849).

Where the land taken was a freehold site of a chapel, and there was great difficulty in obtaining a suitable freehold site for a new chapel, the money was allowed to be applied in purchasing a leasehold chapel on beneficial terms (*In re Rehoboth Chapel* (1874), 44 L. J. Ch. 375).

As to the investment of money arising from the purchase of leaseholds, see s. 74, and notes thereto, *post*.

**Equity of redemption.**—The fund cannot be applied to the purchase of an equity of redemption, and, therefore, may not be applied in part payment of an estate which was to be mortgaged as a security for the remainder of the purchase money (*Ex parte Craven* (1848), 17 L. J. Ch. 215; *Re Portadown, etc. Rail. Co.* (1876), L. R. 10 Ir. Eq. 368).

**Land outside England.**—The money has been allowed to be invested in the purchase of land in the Isle of Man (*In re Taylor's Estate* (1871), 40 L. J. Ch. 454).

**Buildings and other works.**—The fund in court may, under this section, be applied in erecting new buildings and works :

I. As an investment in land.

II. As replacing buildings taken or injured.

**I Buildings as an investment in land.**—When money is paid into court representing the price of land taken it will not generally be allowed to be laid out in the erection of buildings unless special circumstances are shown (*Ex parte Corporation of Liverpool* (1866), L. R. 1 Ch. 596).

The courts have, however, on several occasions, allowed the fund to be so applied, and the cases on the subject are somewhat conflicting. From such of them as have gone to the Court of Appeal it would appear that the following conditions must be complied with :

1. It must be shown that the building is for the benefit of the estate or of the *cestui que trust*.

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2. New buildings must be put in the ground either quite new or in place of old ones which require to be pulled down.

3. In the case of settled lands prior to the Settled Land Acts the remaindermen must consent.

These rules will be found in *Ex parte Corporation of Liverpool* (1866), L. R. 1 Ch. 596; *In re Leigh's Estate* (1871), L. R. 6 Ch. 887; *Drake v. Trefusis* (1875), L. R. 10 Ch. 364.

These rules have been applied to the following facts:

Money in court as the price of corporate lands may not be laid out in building offices for the corporation unless shown to be beneficial to the *cestui que trust* (*Ex parte Corporation of Liverpool* (1866), L. R. 1 Ch. 596).

It may be applied to making an addition to a house which will enhance its value for letting purposes (*In re Speer's Trust* (1876), 3 Ch. D. 262). Or where a portion of an estate is taken it may be spent in erecting houses or cottages which will develop the remainder of the estate (*Re Partington's Trust* (1862), 7 L. T. (N.S.) 522; *Re Dummer's Will* (1865), 2 De G. J. & S. 515; *Ex parte Shaw* (1841), 4 Y. & C. 506; *Re Wight's Devised Estates* (1858), 6 W. R. 718).

For cases under the Settled Land Acts, see *infra*, pp. 147, 148.

Building a house on a vacant piece of ground is, in substance, the same thing as buying a house. Similarly, a ruinous house which must be taken down may be rebuilt if beneficial to the estate (*Drake v. Trefusis* (1875), L. R. 10 Ch. 364; and see *In re Davies's Estates* (1858), 27 L. J. Ch. 712). For cases under similar provisions in wills, etc., to those in *In re Lord Hotham's Trusts* (1871), L. R. 12 Eq. 76; *Brunskill v. Cuird* (1873), L. R. 16 Eq. 493; *In re Newman's Settled Estates* (1874), L. R. 9 Ch. 681; *Donaldson v. Donaldson* (1876), 3 Ch. D. 743.

The money paid for lands held in trust for a chapel has also been applied to the purchase of buildings, and for their conversion into a dwelling-house for the pastor or the keeper of a chapel (*In re Lymington Baptist Chapel* (1877), W. N. 226).

Money in court for payment of part of a glebe has been allowed to be expended in building a new rectory (*In re Incumbent of Whitfield* (1861), 1 J. & H. 610; *Ex parte Bradfield St. Claire (Rector)* (1875), 32 L. T. 248). And in building new farm buildings on the rest of the land (*Ex parte Rector of Shipton-under-Wychwood* (1871), 19 W. R. 549; *Ex parte Rector of Gamston* (1876), 33 L. T. (N.S.) 803).

Money paid for a disused burial ground, taken under what is commonly called *Michael Angelo Taylor's Act* (57 Geo. 3, c. xxix. *post*), may be applied in purchasing a suitable house for a vicarage, and doing the alterations and repairs necessary to adapt it for that purpose (*Ex parte Vicar of St. Botolph's, Aldgate*, [1894] 3 Ch. 544).

Money received for purchase of the glebe has also been allowed to be applied to completing the building of a new rectory, the rest of the money being found otherwise (*Ex parte Hartington* (1875), 23 W. R. 484; *cf. Williams v. Aylesbury and Buckingham Rail. Co.* (1874), L. R. 9 Ch. 684).

The money paid into court in respect of a glebe, if to be laid out in buildings, will be payable to the secretary or nominee of the bishop, under 1 & 2 Vict. c. 106 (*Re Incumbent of Whitfield* (1861), 1 J. & H. 610; *Ex parte Rector of Claypole* (1873), L. R. 16 Eq. 574).

Glebe land may also be sold under the Glebe Lands Act, 1888 (51 & 52 Vict. c. 20). As to the application of the money, see s. 4.

*Repairs and other works.*—From the conditions above laid down it would follow that money cannot be expended in repairs, and it has been refused in certain cases. Thus, it has been refused to a tenant for life to repair the mansion house (*In re Leigh's Estate* (1871), L. R. 6 Ch. 887); and to repaying to a rector money paid by him to complete the rebuilding of a rectory house

which had been in a ruinous condition (*Williams v. Aylesbury and Buckingham Rail. Co.* (1874), 43 L. J. Ch. 825). It was similarly refused to a rector to assist him in paying for the rebuilding of the rectory which had become so dilapidated that it was considered better to rebuild than to repair (*Ex parte Rector of Newton Heath* (1896), 44 W. R. 645).

It has not been allowed to be expended on making new roads and drains (*In re Belfast Water Commissioners* (1870), Ir. R. 5 Eq. 63; *cf. Re Venour* (1876), 2 Ch. D. 522; and *Re Vicar of Queen's Camel* (1863), 11 W. R. 503).

There are, however, several cases where the court has allowed the money to be laid out in repairs, but it is doubtful how far these may be regarded as authorities.

In one case, it was held applicable to the repairs of a copyhold house when the expenditure proposed was necessary to the preservation of the trust, and there were no other funds for the purpose (*In re Aldred's Estate* (1882), 21 Ch. D. 228).

In two cases money paid for a glebe has been allowed to be spent on the repair of the rectory house, although not on the church (*In re Louth and East Coast Rail. Co., Ex parte Rector of Grimoldby* (1876), 2 Ch. D. 225; *Ex parte Rector of Claypole* (1873), L. R. 16 Eq. 574). But see *In re Nether Stowey Vicarage* (1873), L. R. 17 Eq. 156.

Where part of a churchyard had been taken, the court allowed part of the money to be expended on the repair of the chancel windows (*Re London County Council, Ex parte Pennington* (1901), 65 J. P. 536).

*Other works.*—Prior to the Settled Land Acts, the fund has been applied to improving the supply of water to the town where the property which belonged to a charity was situated (*In re Lathropp's Charity* (1866), L. R. 1 Eq. 467), and also to supplying water to a portion of a settled estate which had been built over where there was a difficulty in getting a proper supply (*In re Croker's Estate* (1877), W. N., 38; *cf. In re Leslie* (1876), 2 Ch. D. 185; *In re Venour* (1876), 2 Ch. D. 522).

It has also been allowed for the making of drains (*Vicar of Queen's Camel* (1863), 11 W. R. 503); and in altering rooms in almshouses (*Re Buckinghamshire Rail. Co.* (1850), 14 Jur. 1065).

For cases under settlements, see now the Settled Land Acts, *infra*, p. 146.

When land belonging to a university or college is taken it may be applied to the building of houses or colleges or other buildings under the Universities and College Estates Acts, 21 & 22 Vict. c. 44, ss. 27, 28, and 43 & 44 Vict. c. 46, s. 24 (*Ex parte King's College, Cambridge*, [1891] 1 Ch. 677). And see further, 61 & 62 Vict. c. 55, s. 2.

*Repaying money expended.*—In the case of *In re Leigh's Estate* (1871), L. R. 6 Ch. 887, it was laid down that the money could not be expended in repaying what has already been expended unless the expenditure was properly a charge upon the inheritance. And see *Williams v. Aylesbury and Buckingham Rail. Co.* (1874), L. R. 9 Ch. 684; *In re Stock's Devised Estates* (1880), 42 L. T. (N.S.) 46, to the same effect. If the court would have sanctioned the application if made prior to the payment, although not a charge on the inheritance, and if the remaindermen have previously consented, possibly the repayment may be allowed (*Re Partington's Trust* (1862), 11 W. R. 160). And see *Ex parte Rector of Gamston* (1876), 1 Ch. D. 477; *Ex parte Rector of Holywell-cum-Needlingworth* (1879), 27 W. R. 707.

For cases under settlements, where repayment will be allowed, see now s. 15 of the Settled Land Act, 1890 (53 & 54 Vict. c. 69), *post*, p. 149.

**II. Replacing buildings taken or injured.**—Where a railway passed through a farm and divided it so that the buildings could not be conveniently

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used for one part of the farm, it was held that this was an injury which required the substitution of other buildings, and that the compensation paid might be applied in the erection of new farm buildings on that part which required them (*Re Orford, Worcester, etc. Rail. Co., Ex parte Milward* (1859), 29 L. J. Ch. 245). And see also *Ex parte Dean of Canterbury* (1862), 10 W. R. 505.

Where the effect of the construction of a line of railway had been to divert business from certain trade buildings and to render them useless as such, and had also rendered a stackyard and farm buildings liable to fire and uninsurable, they were considered sufficiently special circumstances to allow money paid for land taken to be laid out in taking down the trade buildings and erecting dwelling-houses instead, and removing the stackyard and roofing the farm buildings with slate instead of thatch (*Re Johnson* (1869), L. R. 8 Eq. 348).

Where a railway company had taken premises used as a hospital, part of the money was allowed to be applied in procuring and fitting up houses for the temporary accommodation of the patients, these being a sufficient substitution within this section (*In re St. Thomas's Hospital* (1863), 11 W. R. 1018).

Where almshouses were taken the money was sanctioned to be laid out in the construction of other almshouses (*Ex parte Thorner's Charity* (1848), 12 L. T. (O.S.) 266).

Under a special Act, where, on the construction of a new road, the vicarage house had been cut through, leaving only half the vicar's kitchen standing, and that half exposed, Lord ELMON ordered part of the money for land taken to be applied to restore the damage done to the vicarage house, although, apparently, there was no proviso as to replacing buildings injured. See a case referred to by TURNER, L.J., *In re Davies's Estate* (1858), 27 L. J. Ch. 712, 713.

The court will not, apparently, order the application of the fund to replacing buildings without a reference to chambers as to whether they should be carried out (*Ex parte Bicester, Re Buckinghamshire Rail. Co.* (1848), 5 Rail. Cas. 205).

## II. APPLICATION OF MONEYS UNDER THE SETTLED LAND ACTS.

When the money paid in under this section is in respect of lands which are the subject of a settlement within the meaning of the Settled Land Acts (see definition of "Settlement," *infra*), the fund in court may be applied not only as provided in the Lands Clauses Acts, but in the ways provided in the Settled Land Acts. This is provided by s. 32 of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), as follows :

32. "Where under an Act incorporating or applying, wholly or in part, the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, or under the Settled Estates Act, 1877, or under any other Act, public, local, personal, or private, money is at the commencement of this Act in court, or is afterwards paid into court, and is liable to be laid out in the purchase of land to be made subject to a settlement then in addition to any mode of dealing therewith authorised by the Act under which the money is in court, that money may be invested or applied as capital money arising under this Act, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and (notwithstanding anything in this Act) according to the same procedure, as if the modes of investment or application authorised by this Act were authorised by the Act under which the money is in court."

The modes of investment and application of capital money and regulations concerning the same are contained in—

The Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 21—30.

The Settled Land Acts (Amendment) Act, 1887 (50 & 51 Vict. c. 30), ss. 1 and 2.

The Settled Land Act, 1890 (53 & 54 Vict. c. 69), ss. 13—15.

The more important of these are given below.

*When Settled Land Acts apply.*—These Acts will apply whenever the money is “liable to be laid out in the purchase of land to be made subject to a settlement.” A settlement is defined in the Settled Land Act, 1882 (45 & 46 Vict. c. 38), thus :

2.—(1) Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.”

Where the money was paid into court in respect of land held absolutely by a charity, *FRY, J.*, held that the money might be invested under s. 21 of the Settled Land Act, 1882, and that the word “settled” in s. 69 of the Lands Clauses Act was to be read with s. 32 of the Settled Land Act (*In re Byron's Charity* (1883), 23 Ch. D. 171, followed apparently in *In re Bethlehem and Bridewell Hospitals* (1885), 30 Ch. D. 541; *Ex parte Jesus College, Cambridge* (1884), W. N. 37).

The word “settled” in s. 69 is to be read as if it were “stood limited” (*Kelland v. Fulford* (1877), 6 Ch. D. 491, *per JESSEL, M.R.*).

Where, by an inclosure award, land is allotted to a vicar “and his successors, vicars of Castle Bytham,” the vicar takes in his corporate capacity, and the lands are not settled lands under the definition clause of the Settled Land Act; but money in court, under s. 69 of the Lands Clauses Consolidation Act in respect of such lands, may nevertheless be laid out as capital money under the Settled Land Acts, inasmuch as the word settlement in s. 32 of the Settled Land Act, 1882, is to be given the wide meaning that it has under s. 69 of the Lands Clauses Act (*Ex parte Vicar of Castle Bytham*, [1895] 1 Ch. 348).

#### *Investment of Capital Money.*

21. Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorised object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes (namely) :

- (i) In investment on government securities, or on other securities on which the trustees of the settlement are by the settlement or by law authorised to invest trust money of the settlement, or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock, of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares, with power to vary the investment into or for any other such securities :
- (ii) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of land tax, rentcharge in lieu of tithe, Crown rent, chief rent, or quit rent, charged on or payable out of the settled land :

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- (iii) In payment for any improvement authorised by this Act :
- (iv) In payment for equality of exchange or partition of settled land :
- (v) In purchase of the seignory of any part of the settled land, being freehold land, or in purchase of the fee simple of any part of the settled land, being copyhold or customary land :
- (vi) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life :
- (vii) In purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land :
- (viii) In purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes :
- (ix) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge :
- (x) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions, of this Act :
- (xi) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

To these modes of application must be added the following from the Settled Land Acts (Amendment) Act, 1887 (50 & 51 Vict. c. 30) :

1. Where any improvement of a kind authorised by the Act of 1882 has been or may be made either before or after the passing of this Act, and a rentcharge, whether temporary or perpetual, has been or may be created in pursuance of any Act of Parliament, with the object of paying off any moneys advanced for the purpose of defraying the expenses of such improvement, any capital money expended in redeeming such rentcharge, or otherwise providing for the payment thereof, shall be deemed to be applied in payment for an improvement authorised by the Act of 1882.

See, for example, the Agricultural Holdings (England) Act, 1883 (46 & 47 Vict. c. 61), ss. 31 and 42.

The fund may also be applied to the erection of cottages and houses for the working classes (Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 74 (1) (b), and see the Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 18).

*Investment in securities.*—The money cannot be applied in the purchase of land out of England unless the settlement expressly authorises it. Section 22 of the Settled Land Act, 1882 (45 & 46 Vict. c. 38).

The law authorising the investment of trust moneys is contained in the Trustee Act, 1893 (56 & 57 Vict. c. 53), Part I. Section 5 enacts that trustees empowered to invest in real securities may invest in mortgage of property held for an unexpired term of not less than 200 years, and not subject to any reservation of rent greater than one shilling a year, or to any right of redemption or re-entry except for non-payment of rent and upon any charge, or upon mortgage of any charge made under the Improvement of Land Act, 1864 (27 & 28 Vict. c. 114). In making an investment the trustees can employ their own broker and solicitor, and are not bound to employ those of the tenant for life (*In re Duke of Cleveland Settled Estates*, [1902] 3 Ch. 350).

*Incumbrances*.—Under these are included a debt secured by a mortgage of a long term (*In re Freiren* (1888), 38 Ch. D. 383; *In re Marlborough's Settlement* (1886), 32 Ch. D. 1), also an annuity under a marriage settlement charged upon tithes for a long period (*Re Esdaile* (1886), 54 L. T. 637). It is not necessary that the mortgage should be one affecting the whole of the settled land (*In re Chaytor's Settled Estate Act* (1884), 25 Ch. D. 651), and where there are several estates held under the same trust, money arising from one estate may be used to discharge incumbrances on the other if for the benefit of all parties (*In re Stamford's Settled Estate* (1889), 43 Ch. D. 84, 95; *In re Freme, Freme v. Logan*, [1894] 1 Ch. 1), even if one estate is in Ireland and the other in England (*In re Cooté, Cooté v. Cadogan* (1899), 81 L. T. 535), and the same principle is applied to estates held on the same trusts under different instruments (*In re Mackenzie's Trusts* (1883), 23 Ch. D. 750; *In re Mundy's Settled Estates*, [1891] 1 Ch. 399; *In re Byng's Settled Estates*, [1892] 2 Ch. 219).

Prior to the provision in s. 1 of the Settled Land Act, 1887 (*supra*), moneys in court could not be applied to paying off rentcharges or instalments of a temporary nature created prior to the Settled Land Act, 1882, for drainage and other improvements under the Land Improvement Act, 1864 (*In re Knatchbull's Settled Estates* (1884), 27 Ch. D. 349; (1885), 29 Ch. D. 588). But the fund in court may now be applied in paying off such instalments or terminable rentcharges, and also to paying a reasonable and proper sum by way of bonus to compensate the lender for loss of interest by reason of the redemption (*In re Lord Egmont's Settled Estates* (1890), 45 Ch. D. 395, not approving as to interest *In re Lord Sudeley's Settled Estates* (1887), 37 Ch. D. 123).

The tenant for life is not, however, entitled to be recouped out of capital money the instalments of the rentcharges paid before the Act of 1887 came into operation, but he may be paid those after the Act has passed, and after he has raised the question, notwithstanding that the improved portions of the estate have been sold (*In re Howard's Settled Estates*, [1892] 2 Ch. 133; and see to same effect *In re Dalison*, [1892] 3 Ch. 522; *In re Bristol's Settled Estates*, [1893] 3 Ch. 161).

But, in order that these incumbrances may be paid off out of capital money, it must be shown that the works done with the money so received from the commissioners must be within the improvements mentioned in s. 25, and not work for which the tenant for life was liable. Money borrowed for land drainage may be paid off (*Re Neorton's Settled Estates* (1889), 61 L. T. 787; *In re Verney's Settled Estates*, [1898] 1 Ch. 508).

The court has a discretion in allowing these incumbrances, and refused to allow money to be applied to pay off a rentcharge on a glebe, on the application of the vicar, as the patrons objected (*Ex parte Vicar of Castle Bytham*, [1895] 1 Ch. 348).

The court also refused to allow the money to be applied in repaying a sum of money paid by a tenant for life in order to reduce the interest payable in respect of rentcharges created under the Improvement of Land Act, 1864 (*In re Verney's Settled Estates*, [1898] 1 Ch. 508).

Clause (iii).—*Improvements*.—These are dealt with in s. 25, and notes thereto, *infra*.

Clause (ix).—See, *infra*, note "In payment to any person becoming absolutely entitled," p. 150.

Clause (x).—*Costs*.—As to this, see s. 80 of the Lands Clauses Act, *post*.

The commission of an estate agent for letting parts of a settled estate have been allowed out of capital money (*In re Maryon-Wilson's Settled Estates*, [1901] 1 Ch. 934).

In a case of improvements under the Settled Land Act, 1882, it was held that the cost as between solicitor and client of the solicitor and surveyor of

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the tenant for life for preparing and carrying out the necessary scheme for improvements were costs incidental to the application, and were payable out of the capital moneys (*Re Lord Stamford's Settled Estates* (1889), 43 Ch. D. 84).

*Improvements with Capital Trust Money.*

25. Improvements authorised by this Act are the making or execution on, or in connection with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes (namely) :

- (i) Drainage, including the straightening, widening, or deepening of drains, streams and watercourses :
- (ii) Irrigation ; warping :
- (iii) Drains, pipes, and machinery for supply and distribution of sewage as manure :
- (iv) Embanking or weiring from a river or lake, or from the sea, or a tidal water :
- (v) Groynes ; sea-walls ; defences against water :
- (vi) Inclosing ; straightening of fences ; re-division of fields :
- (vii) Reclamation ; dry warping :
- (viii) Farm roads ; private roads ; roads or streets in villages or towns :
- (ix) Clearing ; trenching ; planting :
- (x) Cottages for labourers, farm-servants, and artisans, employed on the settled land or not :
- (xi) Farmhouses, offices, and out-buildings, and other buildings for farm purposes :
- (xii) Saw mills, scutch-mills, and other mills, water-wheels, engine-houses, and kilns, which will increase the value of the settled land for agricultural purposes or as woodland or otherwise :
- (xiii) Reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufacturing, or other purposes, or for domestic or other consumption :
- (xiv) Tramways ; railways ; canals ; docks :
- (xv) Jetties, piers, and landing places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes :
- (xvi) Markets and market places :
- (xvii) Streets, roads, paths, squares, gardens, or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connection with the conversion of land into building land :
- (xviii) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connexion with any of the objects aforesaid :
- (xix) Trial pits for mines, and other preliminary works necessary or proper in connexion with development of mines :
- (xx) Reconstruction, enlargement, or improvement of any of those works.

These improvements have been extended by the Settled Land Act, 1890, as follows :

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13. Improvements authorised by the Act of 1882 shall include the following ; namely,

- (i) Bridges ;
- (ii) Making any additions to or alterations in buildings reasonably necessary or proper to enable the same to be let ;
- (iii) Erection of buildings in substitution for buildings within an urban sanitary district taken by a local or other public authority, or for buildings taken under compulsory powers, but so that no more money be expended than the amount received for the buildings taken and the site thereof ;
- (iv) The re-building of the principal mansion house on the settled land : Provided that the sum to be applied under this subsection shall not exceed one-half of the annual rental of the settled land.

It has been laid down that, in determining whether any particular application of capital money under the Settled Land Acts should be sanctioned by the court, the code of rules in these Acts is to be regarded solely, and that the decisions under the Lands Clauses Acts are not applicable (*In re Lord Gerard's Settled Estate*, [1893] 3 Ch. 252). But in determining questions under the Lands Clauses Acts, the decisions under both sets of Acts will no doubt apply. See the cases under the Lands Clauses Acts, cited *supra*, note "Buildings."

In the last-mentioned case the court refused to sanction the following improvements : (1) Building additions to the mansion house, and improving its architectural appearance ; (2) Building a chapel for Roman Catholic service ; (3) Building new stables, the then existing stables being inconvenient and insufficient ; (4) Building a house for the residence of an estate agent, disapproving *In re Houghton's Estate* (1885), 30 Ch. D. 102, where similar improvements were sanctioned as an outlay for capital money.

An application to lay out capital moneys to come to the hands of trustees in the construction of roads and sewers so as to enable them to sell an estate in building lots was refused, as a prospective order of this kind would be contrary to the provisions of s. 26, *infra* (*In re Millard's Settled Estates*, [1893] 3 Ch. 116 ; *In re Bristol's Settled Estates*, [1893] 3 Ch. 161 ; *In re Hotchkin's Settled Estates* (1887), 35 Ch. D. 41, as to this may be considered overruled).

Ordinary repairs cannot be paid out of capital moneys, they must come out of income ; only such improvements as are mentioned in the Act will be allowed (*Clarke v. Thornton* (1887), 35 Ch. D. 307). Drainage works required to be done under the Public Health Act are apparently not repairs, and are payable out of capital money (*In re Barney, Harrison v. Barney*, [1894] 3 Ch. 562 ; *In re Lever, Cardwell v. Lever*, [1897] 1 Ch. 32). But in the case of leaseholds where there had been no scheme, the court held that the tenant for life should pay for works done under a sanitary notice, the lessee being bound by the lease to do such works, and the trust was to provide improvements out of income (*In re Partington, Reigh v. Kane*, [1902] 1 Ch. 711). In such cases as fall within s. 15 of the Act of 1890, the court will endeavour to find out the testator's intention, and exercise a discretion (*ibid.*, and *In re Thomas, Weatherall v. Thomas*, [1900] 1 Ch. 319 ; *In re Copeland's Settlement*, [1900] 1 Ch. 326).

The following improvements have been authorised :

The erection of sea-walls in order to improve the land for building purposes (*In re Bethlehem and Bridewell Hospitals* (1885), 30 Ch. D. 541).

The erection of new farm buildings and houses, draining, reconstruction of existing buildings, the matter being referred to chambers to determine

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what were improvements, and what ordinary repairs (*Clarke v. Thornton* (1887), 35 Ch. D. 307). As to the distinction between a trust for improving and for purchasing land, see *Vine v. Raleigh*, [1891] 2 Ch. 13.

In erecting a new pumping engine and pumps for draining mines (*In re Mundy's Settled Estates*, [1891] 1 Ch. 399).

In supplying water to a building estate (*In re Bulwer Lytton's Will* (1888), 38 Ch. D. 20; *In re Orrell Park Estate* (1894), W. N. 135).

The erection of a silo was refused as being at the time in the nature of an experiment (*Re the Broadwater Estate* (1885), 53 L. T. 745).

The re-roofing of farm buildings with galvanised iron in place of thatch has been held to be an improvement within sub-s. (xx) of s. 25 (*In re Verney's Settled Estates*, [1898] 1 Ch. 508), but it was there doubted if the making of new fences, partly in place of old ones, and partly in order to divide a park for grazing, was an authorised improvement.

The expenses of flagging, paving, and sewerage of new streets has also been allowed (*In re Legh's Settled Estate*, [1902] 2 Ch. 274, and see *In re Smith's Settled Estates*, [1901] 1 Ch. 689).

The Settled Land Act, 1890, s. 13, *supra*, p. 147, has enlarged the power of the court.

Thus, under sub-s. (ii) of that section, capital money has been allowed to be laid out in placing a new roof on a house not necessarily the mansion house, in lieu of an old and rotten one, and in making an alteration in the main entrance by which a billiard room could be provided and which would render the house less cold and draughty, in order that it might be let. The providing of a heating apparatus and pipes, though rendering the house more comfortable and convenient, was held not to be an improvement, or an alteration within the above sections (*In re Gaskell's Settled Estates*, [1894] 1 Ch. 485).

The substitution of a block floor for ordinary floor boards to keep out dry rot, has been sanctioned, where there has been an intention to let (*Stanford v. Roberts*, [1900] 1 Ch. 440). The word "additions," however, means structural additions, and so it has been held, following *In re Gaskell's Settled Estates*, *supra*, that an electric light installation is not such an addition to a building upon which capital money can be expended (*In re Clarke's Settlement*, [1902] 2 Ch. 327). Such an installation was, however, sanctioned in *In re Freake's Settlement*, [1902] 1 Ch. 97, but this was not approved of by the Court of Appeal in *Re Blagrave's Settled Estates*, [1903] 1 Ch. 560. The expenditure on the erection of the engine room and accumulating room, but not the other expenditure incurred in connection with the installation, was allowed in that case by JOYCE, J. The tenant for life appealed as to the disallowance of the installation only, but ROMER and COZENS-HARDY, L.JJ., intimated that in their view a house for a dynamo was not within the section. As to a hot water supply, see *Standing v. Gray*, [1903] 1 R. 49.

Under sub-s. (iv) of the same section, the tenant for life was allowed out of the fund money expended by him in reconstructing the mansion house, when a large portion was taken down, although part was left unaltered, the house as a whole being enlarged and made more convenient. Each case must be decided on its own facts, but there must be a substantial rebuilding (*In re Walker's Settled Estate*, [1894] 1 Ch. 189).

The rebuilding under this sub-s. (iv) will not include structural repairs, however extensive, such as putting on a new roof, or rearranging the drainage. Nor will these be allowed under sub-s. (ii) unless there is a present intention to let, if not an immediate prospect of letting (*In re De Teissier's Settled Estates*, [1893] 1 Ch. 153; and see also *In re Wright's Settled Estates*, (1900), 83 L. T. 159, approved in *In re Willis*, [1901] W. N. 208), but if the mansion house is practically rebuilt, a capital sum equal to half the annual rental will be allowed, but nothing more, for the salvage of the original house when it was infested with dry rot (*In re Legh's Settled Estates*, [1902] 2 Ch. 274).

The words "one-half of the annual rental of the settled land," refer to the whole of the land subject to the settlement, and not to the particular estate on which the house is situate (*In re Lord Gerard's Settled Estate*, [1893] 3 Ch. 252), and they include the income of money in court in respect of the settled land (*In re De Teissier's Settled Estates*, [1893] 1 Ch. 153, and see *In re Lord de Tabley* (1896), W. N. 162; *In re Montague*, [1897] 2 Ch. 8), but not anything in respect of land in the occupation of the tenant for life, but they may include the amount of rent usually paid for a farm temporarily vacant (*In re Walker's Settled Estate*, [1894] 1 Ch. 189).

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26.—(1) Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorised by this Act, he may submit for approval to the trustees of the settlement, or to the court, as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon.

(2) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees may apply that money in or towards payment for the whole or part of any work or operation comprised in the improvement, on—

(i) A certificate of the Land Commissioners certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be conclusive in favour of the trustees as an authority, and discharge for any payment made by them in pursuance thereof; or on

(ii) A like certificate of a competent engineer or able practical surveyor nominated by the trustees and approved by the commissioners, or by the court, which certificate shall be conclusive as aforesaid; or on

(iii) An order of the court directing or authorising the trustees to so apply a specified portion of the capital money.

(3) Where the capital money to be expended is in court, then, after a scheme is approved by the court, the court may, if it thinks fit, on a report or certificate of the commissioners, or of a competent engineer or able practical surveyor, approved by the court, or on such other evidence as the court thinks sufficient, make such order and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement.

For the Land Commissioners are now substituted the Board of Agriculture (52 & 53 Vict. c. 30).

The Settled Land Act, 1890 (53 & 54 Vict. c. 69), has amended this as follows :

15. The court may, in any case where it appears proper, make an order directing or authorising capital money to be applied in or towards payment for any improvement authorised by the Settled Land Acts, 1882 to 1890, notwithstanding that a scheme was not, before the execution of the improvement, submitted for approval, as required by the Act of 1882, to the trustees of the settlement or to the court.

Trustees may approve a scheme for improvements before they have capital money in hand, and if the improvements are executed and paid for by the tenant for life with the knowledge of the trustees and in anticipation of moneys becoming available the trustees may reimburse the tenant the amount so expended (*In re Duke of Norfolk's Parliamentary Estates*, *Duke of Norfolk v. Herries*, [1900] 1 Ch. 461, distinguishing *In re Millard's Settled Estates*, [1893] 3 Ch. 116; and see *In re Tucker's Settled Estates*, [1895] 2 Ch. 468).

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This section of the 1890 Act is retrospective as regards costs of improvements executed since the Settled Land Act, 1882 (45 & 46 Vict. c. 38), but *quære* as to those prior to that Act (*In re Ormrod's Estate*, [1892] 2 Ch. 318).

For cases prior to this amendment, see *In re Hotchkin's Settled Estates* (1887), 35 Ch. D. 41; *Re the Broadwater Estate* (1885), 53 L. T. 745.

Section 15 enables the court to sanction the application of capital moneys in repaying to a tenant for life the expenses of improvements on the settled estate executed and paid for by him without the submission of a scheme. The cost of works which are not permanent improvements likely to benefit the remainderman ought not to be allowed, but should be paid out of income. Costs of altering drains and sanitary arrangements of the mansion house were not allowed out of capital (*In re Tucker's Settled Estates*, [1895] 2 Ch. 469; *In re Earl of Lisburne's Settled Estates*, [1901] W. N. 91).

The court has a discretion in these cases under s. 15, and endeavours to carry out the settlor's intention (*In re Thomas, Weatherall v. Thomas*, [1900] 1 Ch. 319; *In re Partington, Reigh v. Kane*, [1902] 1 Ch. 711).

**"In payment to any party becoming absolutely entitled."**—This means "entitled to his or her own use," as, for instance, where an infant attains twenty-one, or a married woman becomes discovert. See *per* JESSEL, M.R., in *Kelland v. Fulford* (1877), 6 Ch. D. 491, p. 495.

A *waterworks company*, part of whose land was taken, was held to be absolutely entitled. The land taken was used by them under statutory powers, and they had no power of sale. The money was held to have been rightly paid in, but was ordered to be paid out to them (*Re Chelsea Waterworks Co.* (1887), 56 L. T. 421).

A *dowress* is a person absolutely entitled and may have the value of her dower as determined by the valuers paid to her out of the fund in court (*In re Hall's Estate* (1870), L. R. 9 Eq. 179).

A person who under a will was to be entitled to the testator's land on paying a specified price, was held entitled to the money paid into court, representing the land on paying such price, although the amount in court was more than twice the specified sum (*Re Cant's Estate* (1859), 4 De G. & J. 503).

Copyholders and freeholders with right of common are absolutely entitled to their share of the money paid into court in respect of common land taken compulsorily. It was ordered that the sum be apportioned between them and paid out to them (*Fox v. Amhurst* (1875), L. R. 20 Eq. 403).

Tenants of such copyholders have no such right (*Austin v. Amhurst* (1877), 7 Ch. D. 689). In the case of freemen of a borough, see *Nash v. Coombs* (1868), L. R. 6 Eq. 51. For provision as to copyhold lands and commons, see *post*, ss. 95—107.

*Mortgagees* in possession are entitled to be paid out of the price of the premises including the sum assessed for loss of goodwill (*Pile v. Pile* (1876), 3 Ch. D. 36), but when not in possession, see *Cooper v. Metropolitan Board of Works* (1883), 25 Ch. D. 472.

A *tenant for life* without impeachment of waste is not entitled to any part of the compensation paid by a railway company in respect of minerals under the settled estate, although a portion of them would have been worked out during the interval which elapsed between the notice of intention to work and the actual sale, inasmuch as s. 69 provides for no apportionment (*In re Robinson's Settlement Trusts*, [1891] 3 Ch. 129); but see s. 73 and note thereto.

*Transfer*.—A transfer of a fund from one account to another is a payment out of court, when the name of the account no longer includes that of the promoters (*Melling v. Bird* (1853), 22 L. J. Ch. 599; *Re Bristol Grammar School* (1878), 47 L. J. Ch. 317; *In re Buckingham* (1876), 2 Ch. D. 690; *cf. Drake v. Greaves* (1886), 33 Ch. D. 609).

*Trustees.*—Trustees under settlements, whether with power of sale or not, are not persons absolutely entitled under s. 69. The Settled Land Act, 1882, s. 21 (9), see *supra*, p. 143, provides that the money may be paid out to persons empowered to give an absolute discharge, and, reading these sections together, the court has ordered moneys to be paid out to trustees of settlements (*In re Wright's Trusts* (1883), 24 Ch. D. 662; *In re Harrop's Trusts* (1883), 24 Ch. D. 717; *In re Rutland's Settlements* (1883), 31 W. R. 247; *In re Rathmines* (1885), 15 Ir. L. R. 576; cf. *Cookes v. Cookes* (1887), 34 Ch. D. 498; *In re Belfast Improvement Acts, Ex parte Reid*, [1898] 1 I. R. 1).

Although the court has jurisdiction to order the payment of the money to trustees, it is not bound to do so, but has a discretion, and may refuse (*In re Smith* (1888), 40 Ch. D. 386, not following *In re Hobson's Trusts* (1878), 7 Ch. D. 708); but the latter case has been held to be not overruled (*In re Morgan, Smith v. May*, [1900] 2 Ch. 474), and was followed in *In re Mayor, etc., of Sheffield and the Trustees of St. William's Roman Catholic Chapel and Schools, Sheffield*, [1903] 1 Ch. 208.

To clear up any doubt on this question, the Settled Land Act, 1890 (53 & 54 Vict. c. 69), enacts as follows:

14. All or any part of any capital money paid into court may, if the court thinks fit, be at any time paid out to the trustees of the settlement for the purposes of the Settled Land Acts, 1882 to 1890.

*Trustees of charities.*—There was some conflict among the cases as to whether the fund in court could or could not be paid out to trustees of a charity. The decisions turned partly upon the question whether or not they had a power of sale, and whether the consent of the Charity Commissioners was required. Since the decision of *In re Smith* (1888), 40 Ch. D. 386, cited *supra*, and the Settled Land Act, 1890, the court has power to pay the money out where it sees fit, and probably in cases where the Charity Commissioners have jurisdiction the court will require their consent, especially where the trustees have no power of sale. See the cases prior to *In re Smith*, *supra*; *Ex parte Trustees of Tid St. Giles' Charity* (1869), 17 W. R. 758; *In re Spurtowne's Charity* (1874), L. R. 18 Eq. 279; *In re St. Alphage* (1886), 55 L. T. 314; *Re Faversham Charities* (1862), 10 W. R. 291; *Ex parte Governors of Norfolk Clergy* (1882), W. N. 53; *In re Mason's Orphanage and London and North Western Rail. Co.*, [1896] 1 Ch. 596.

If the Charity Commissioners have no jurisdiction the money will be paid out to the trustees. Thus, a charitable corporation, partly supported by voluntary subscriptions, had purchased land with part of such contributions and sold it to a railway company, who paid the price into court. The Charity Commissioners opposed the payment out to the trustees without their consent, but an order was made that the money be paid out, as the Commissioners had no jurisdiction (*In re Clergy Orphan Corporation*, [1894] 3 Ch. 145; *In re Mayor, etc., of Sheffield and the Trustees of St. William's Roman Catholic Chapel and Schools, Sheffield*, [1903] 1 Ch. 208).

The court will, however, order the fund to be transferred to the account of the official trustees of charitable funds in trust for the charity, and this will be equivalent to a payment out (*Re Bristol Grammar School* (1878), 47 L. J. Ch. 317; *Ex parte Bishop Monk's Horfield Trust* (1881), 29 W. R. 462; *Re Rector of St. Alban's, Wood Street* (1891), 66 L. T. 51).

*Possessory title.*—As to the right of persons having possessory titles to have the fund in court, see note to s. 79, *post*, p. 176.

*Tenants in tail.*—When the money is paid out to a person who would have been tenant in tail of the land taken, there appears to have been some diversity of opinion as to whether a disentailing deed ought to be executed

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or not, but it would appear now to be settled that such a deed is necessary, although the practice formerly was not to require it (*In re Butler's Will* (1873), L. R. 16 Eq. 479 (*per* Lord SELBORNE), under the Lands Clauses Act, and followed as regards private settlements by JESSEL, M.B., in *In re Broadwood's Settled Estates* (1875), 1 Ch. D. 438; and the Lords Justices in *In re Reynolds* (1876), 3 Ch. D. 61, and in *Re Limerick and Ennis Rail. Co., Ex parte Smyth* (1875), 1 R. 10 Eq. 66). For cases to the contrary, see *Re Rone* (1874), L. R. 17 Eq. 300; *In re Wood's Settled Estates* (1875), L. R. 20 Eq. 372; *Re Holden* (1863), 1 H. & M. 445; *Notley v. Palmer* (1865), L. R. 1 Eq. 241; *Re Holden's Estate* (1864), 10 Jur. (N.S.) 308; *Re South Eastern Rail. Co.* (1861), 30 Beav. 215.

As to whether a disentailing deed is necessary when the fund is small, see *Re Tylden's Trust* (1863), 11 W. R. 869; *Re Watson* (1864), 10 Jur. (N.S.) 1011; *Sowry v. Sowry* (1860), 8 W. R. 339.

Where tenants had executed a disentailing deed, and had assigned the money in court to trustees to such uses as they should appoint, they were held entitled to be paid the amount without executing the appointment (*Re Winstanley's Settled Estates* (1886), 54 L. T. 840).

*Married women.*—When money is paid into court in respect of land to which a married woman is entitled absolutely, otherwise than by the Married Women's Property Act, it will be paid out to her on her own receipt, provided the amount does not exceed £500, and her husband consents (*Re Morton's Estate*, W. N. (1874), 181; *Andrewes v. Tyrell* (1885), 29 Sol. J. 622; *Seton*, 77).

It may be paid out to her husband, whatever the amount, but in this case, she must consent by deed acknowledged, or in exceptional circumstances, as when the married woman is abroad, the court may allow the consent to be given upon examination (*In re Hayes* (1861), 9 W. R. 769; *In re Tyler's Estate* (1860), 8 W. R. 540; *In re Robins' Estate* (1879), 27 W. R. 705; *In re Bell's Settled Estates* (1877), 25 W. R. 901). When the amount has been small the court has dispensed with these (*Re Clarke's Estate* (1864), 13 W. R. 401; *Guest v. Neames*, W. N. (1884), 227; but see *White v. Herrick* (1869), 4 Ch. 345; and see, under the Partition Acts, *Wallace v. Greenwood* (1880), 16 Ch. D. 362).

See also notes to s. 70, *post*; and as to costs see notes to s. 80, *post*.

Order for application and investment meanwhile.

**70.** Such money may be so applied as aforesaid upon an order of the Court of Chancery [*in England or the Court of Exchequer in Ireland, (a)*] made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General in the purchase of three per centum consolidated or three per centum reduced bank annuities, or in Government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

(a) These words have been repealed by the Statute Law Revision Act, 1892. The Court of Chancery is now the Chancery Division of the High Court of Justice (Judicature Act, 1873).

"As aforesaid."—*I.e.*, according to s. 69, and see notes thereto as to investing under the Settled Land Acts.

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"Of the party who would have been entitled to the rents and profits."—In cases under settlements the proper person to apply is the tenant for life; the remaindermen need not be before the court (*In re Browne* (1852), 6 Rail. Cas. 733; *Ex parte Staples* (1852), 1 De G. M. & G. 294; *Re Finch* (1866), 14 L. T. 394). But in cases where the consent of the remainderman is necessary, as in cases of improvements, the remainderman should be before the court (*Re Leigh's Estate* (1871), L. R. 6 Ch. 887, 890, note). And see notes to s. 69, *ante*, p. 139. As to service generally, see notes to s. 80.

A remainderman has no right to apply to the court that the money may be invested or transferred to the account of an action between the tenant for life and himself (*Nash v. Nash* (1868), 37 L. J. Ch. 927). An annuitant was, under similar provisions in a private Act, held to be unable to petition for the application of the purchase money, although the annuity was charged on the land with power of entry and distress, the annuitant being considered merely an incumbrancer (*Ex parte Back* (1828), 2 Y. & J. 386). The dividends have also been ordered to be paid to the owner on his petition, although the lands were subject to an annuity (*Ex parte Cofield* (1847), 11 Jur. 1071), and have been ordered to be paid to him on the application of the owner and his annuitants, the latter agreeing not to distrain on the land taken (*In re Pedley's Estate* (1855), 1 Jur. (N.S.) 654). And if the income of the fund is not sufficient to pay the annuity, the arrears and the annuity being required to be paid in full before the persons entitled, subject to the annuity, could claim anything, the annuitant was held to be entitled to have the deficiency made good out of the *corpus* by periodical sales (*Ex parte Wilkinson* (1849), 3 De G. & Sm. 633).

When a tenant for life dies and another person becomes entitled to the rents and profits, a new application and a new order is necessary (*In re Joliffe's Estate* (1870), L. R. 9 Eq. 668).

Prior to the Apportionment Act, 1870 (33 & 34 Vict. c. 35), the income arising from invested funds was not apportionable (*In re Lawton's Estates* (1866), L. R. 3 Eq. 469). That Act, however, makes it so, and on the death of any person who was, by an order of court, directed to be paid such dividends, the personal representatives may have payment made to them on proof of the death of the person by application at the Pay Office (Supreme Court Funds Rules, 1894, r. 62). And see *Chapman v. Chapman* (1874), L. R. 17 Eq. 350.

**Burial grounds.**—When the freehold of a burial ground is vested in a rector, and he has enjoyed the right to the burial fees, he is the person entitled under this section to apply for the investment and to receive the dividends, whatever may be the ultimate destination of the *corpus*, although the burial ground may have been closed for burials under an Order in Council, and at the time when it was taken may have been entirely unproductive (*Ex parte Rector of Liverpool* (1870), L. R. 11 Eq. 15; *Ex parte Rector of St. Martin's, Birmingham* (1870), L. R. 11 Eq. 23). As to the ultimate destination, see *Ex parte Vicar of St. Botolph's, Aldgate*, [1894] 3 Ch. 544.

Where the ground was vested in the vicar and churchwardens, but the fees had been payable to certain church trustees by the churchwardens who received them in the first instance, an application for investment by the church trustees and payment of the dividends to them was refused; but on presentation of a second petition by the Attorney-General praying for a scheme, an order was made directing the dividends to be paid to the trustees, the court holding that it had jurisdiction upon the two petitions (*In re St. Pancras Burial Ground* (1866), L. R. 3 Eq. 173). As to the ownership

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**NOTE.** As to compensation for disused burial grounds, see cases cited in note to s. 63, *ante*, p. 97.

**“ Until the money can be so applied it may . . . be invested.”**

—By 23 & 24 Vict. c. 38, the Lord Chancellor, with the advice of certain judges, was empowered to make general orders as to the investment of cash under the control of the court. That power is, by the Judicature Acts, transferred to the judges of the Supreme Court of Judicature, and the investment of cash under control of or subject to the order of the court is governed by Order 22, r. 17 of the Rules of the Supreme Court. The present rule came into operation on November 26th, 1888, but it has been extended by r. 17A to debenture stock in Isle of Man local loans, by the insertion of the words in italics. Rule 1 of the Rules of the Supreme Court, October, 1899, extended the rule to debenture stock of the city of London of June, 1897, and other metropolitan stocks were added by Rules of the Supreme Court, July, 1901, r. 3. As extended, it provides as follows :

Order 22, r. 17.—Cash under the control of, or subject to the order of the court may be invested in the following stocks, funds, or securities ; namely—

Two and Three-quarters per cent. Consolidated Stock (to be called after the 5th of April, 1903, Two and a-Half per cent. Consolidated Stock) :

Consolidated Three Pounds per cent. Annuities :

Reduced Three Pounds per cent. Annuities :

Two Pounds Fifteen Shillings per cent. Annuities :

Two Pounds Ten Shillings per cent. Annuities :

Local Loans Stock under the National Debt and Local Loans Act, 1887 :

Exchequer Bills :

Bank Stock :

India Three and a-Half per cent. Stock :

India Three per cent. Stock :

Indian guaranteed railway stocks or shares, provided in each case that such stocks or shares shall not be liable to be redeemed within a period of fifteen years from the date of investment :

Stocks of Colonial Governments guaranteed by the Imperial Government :

Mortgage of freehold and copyhold estates respectively in England and Wales :

Metropolitan Consolidated Stock, Three Pounds Ten Shillings per cent. :

Three per cent. Metropolitan Consolidated Stock :

Two and a-Half per cent. Metropolitan Consolidated Stock :

Two and a-Half per cent. London County Consolidated Stock :

Three per cent. London County Consolidated Stock :

Inscribed Two and a-Half per cent. Debenture Stock issued by the Corporation of London, and secured by a trust deed, dated the 24th June, 1897.

Debenture, preference, guaranteed, or rentcharge stocks of railways in Great Britain or Ireland having for ten years next

before the date of investment paid a dividend on ordinary stock or shares :

Nominal debentures or nominal debenture stock under the Local Loans Act, 1875, or under the *Isle of Man Loans Act*, 1880, provided in each case that such debentures or stock shall not be liable to be redeemed within a period of fifteen years from the date of investment.

Rule 18. Every application for the purpose of the conversion of any stocks, funds, or securities into any other stocks, funds, or securities authorised by the last preceding rule, shall be served upon the trustees thereof, if any, and upon such other persons, if any, as the court or judge shall think fit.

There existed for some time a doubt as to whether money paid into court under the Lands Clauses Act was "cash under the control of the court" within the meaning of 23 & 24 Vict. c. 38, and, consequently, it was doubtful whether the money would be invested in the securities mentioned in the orders made pursuant thereto. It is now settled that such money is cash under the control of the court (*Ex parte St. John the Baptist College, Oxford* (1882), 22 Ch. D. 93, where the previous authorities are cited and discussed). This case has been followed in the case of *Re Brown* (1890), 59 L. J. Ch. 530, where the investment was altered into preference stock of a railway company under the above order; and see *In re Gaselee*, [1901] 1 Ch. 924. For a case under a private Act, see *Jackson v. Tyas* (1883), 52 L. J. Ch. 830.

When the money is paid in, in respect of settled land, it may be invested by ss. 32 and 21 (1) of the Settled Land Act, 1882, *ante*, p. 142, in securities which the trustees of the settlement are by the settlement or by law authorised to invest trust money. See *In re Hanbury's Trust*, W. N. (1883), 110.

"Accountant-General" is now the Paymaster-General. See note to s. 69, *ante*, p. 133.

The Paymaster-General's authority for carrying out the order is the schedule to the order, a copy of which is directed to be sent to him by the registrar, who draws up and enters the order (Supreme Court Funds Rules (1894), 23—25). The paymaster, on receipt of the copy schedules, forthwith draws up the necessary directions for payment out of the money or for investment. Sales of securities in pursuance of an order, of which a copy has been received in the pay office, shall be made by the paymaster upon application by or on behalf of the persons interested therein, and such application may be sent by post (r. 47). The official broker must be employed. As to costs of brokerage, see *In re Gaselee*, [1901] 1 Ch. 924, and notes to s. 80, *post*.

Formerly it was necessary to take the original order to the pay office, and to request that each particular direction should be carried out when required, and the solicitor might be made personally liable if he neglected to do so. See *Batten v. Wedgwood Coal and Iron Co.* (1886), 31 Ch. D. 346). The Consolidated Fund of the United Kingdom is liable to make good the default of the Paymaster-General (Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), s. 5; and see *Slater v. Slater* (1888), 58 L. T. 149).

#### *Applications for Investments.*

**Petition or summons.**—The procedure is now regulated by Order 55, r. 2 (1), (2), (3), and (7), which are set out hereunder.

From these it appears that applications for interim and permanent investments should now be made in chambers by summons, except in difficult

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cases or where for other reasons procedure by petition is cheaper. Applications for payment out or transfer should also be made by summons if the amount is under £1,000, or where there has been a judgment or order declaring the rights or where the title depends only upon proof of the identity, or the birth, marriage, or death of any person. In other cases the procedure will still be by petition.

*Rules of Supreme Court, Order LV.*

Rule 2. The business to be disposed of in chambers by judges of the Chancery Division, shall consist of the following matters, in addition to the matters which under any other rule or by statute may be disposed of in chambers :

- (1) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where there has been a judgment or order declaring the rights or where the title depends only upon proof of the identity or the birth, marriage, or death of any person :

This sub-section is not restricted or qualified in its operation by any of the following sub-sections, so that when money has been paid into court under the Lands Clauses Act, and the rights of the parties have been declared by previous orders of the court, the application for payment out or transfer should be made by summons, although the amount exceed £1,000 (*In re Brandram* (1883), 25 Ch. D. 366 ; *Re Broadwood* (1886), 55 L. J. Ch. 646 : *cf. Re Barker*, W. N. (1884) 237). This applies also to the carrying over of a fund to the credit of another action (*Re Lancashire and Yorkshire Rail. Co.* (1895), 72 L. T. 627).

Where the amount exceeds £1,000 and there is no real difficulty, the title depending only upon proof of identity and birth of applicant, the application should apparently be made by summons (*Bates v. Moore* (1888), 38 Ch. D. 381 ; *Re Broadwood* (1886), 55 L. J. Ch. 646 ; but see to the contrary, *Re Rhodes* (1886), 31 Ch. D. 499). But if there has been no order declaring the rights of the parties, and the title does not depend only on the proof of the death of any person, the application should be made by petition (*Re Evans* (1886), 54 L. T. 527).

If the title involves also a question of construction of a will or other instrument, it would appear to be doubtful whether application should be made under this rule or not. KEKEWICH, J., in *Re Hicks* (1894), 70 L. T. 529, decided it could not, but also stated that there was a diversity of opinion as to this among the judges of the Chancery Division. See *Re Birkin*, [1901] W. N. 33.

Where the application has been made by summons but the proper procedure was by petition, the costs of the summons may be allowed on the petition if the application by summons was made reasonably (*In re Jelland's Trusts*, W. N. (1888) 42).

- (2) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where the cash does not exceed £1,000 or the securities do not exceed £1,000 nominal value :

Applications for payment or transfer of sums paid into court under the Lands Clauses Act when under £1,000 should now be made by summons (*Ex parte Maidstone, etc. Rail. Co.* (1883), 25 Ch. D. 168 (in which case the money was paid in under s. 85 of the Lands Clauses Act) ; *In re Madgwick* (1883), 25 Ch. D. 371 ; *In re Calton's Will* (1883), 25 Ch. D. 240).

Where several sums were in court, paid in by several public bodies in respect of charity lands and application was made for transfer of the whole

amount into the names of the official trustees of charitable funds, the application was held rightly to have been made by petition, although some of the funds paid in were under £1,000 (*Re the Rector of St. Alban's, Wood Street* (1891), 66 L. T. 51). The costs payable by those bodies who have paid in sums under £1,000 would probably be limited to the amount of the costs or summons (*Attorney-General v. St John's Hospital, Bath*, [1893] 3 Ch. 151; and see s. 80, *post*).

Where the fund in court exceeds £1,000, but the share of the applicant is less than £1,000, it would appear that the application should be by petition (*May v. Douce*, W. N. (1884) 122; *Re Evans* (1886), 54 L. T. 527).

Where the cash in court and the nominal value of the securities together exceed £1,000, the proper procedure is by petition (*Re Haworth*, W. N. (1885) 48).

Where the cash paid in does not exceed £1,000, but when the interest accrued is added thereto the amount exceeded £1,000, a petition would appear to be proper (*Ex parte Trustees of Finsbury Savings' Bank*, W. N. (1886) 150).

Where the costs of a petition are not more than would have been incurred on a summons, they will be allowed (*In re Arnold*, W. N. (1887) 122; *In re Earl de Grey's Estate*, W. N. (1887) 241), and if procedure by summons be the proper course, the applicant who proceeds by petition will be at least allowed thereon costs equal to that which he would have incurred on summons (*Re Broadwood* (1886), 55 L. J. Ch. 646; *Re Lancashire and Yorkshire Rail. Co., Slater v. Slater* (1895), 72 L. T. 627, where the costs allowed were such costs as would have been incurred on a summons adjourned to a judge and attended by counsel).

- (3) Applications for payment to any person of the dividend or interest on any securities standing to the credit of any cause or matter, whether to a separate account or otherwise :

As to the parties entitled to dividends or interest, see in this note, "Of the party who would have been entitled to the rents and profits," p. 153, *supra*.

- (7) Applications for interim and permanent investment and for payment of dividends under the Lands Clauses Consolidation Act, 1845, and any other Act whereby the purchase money of any property sold is directed to be paid into court :

Although the Lands Clauses Act provides that such applications shall be made by petition, that proviso is, nevertheless, repealed by the above rule (*Ex parte Mayor of London* (1883), 25 Ch. D. 384).

Where funds paid into court by a railway company for land belonging to a college are applied for to be laid out in college buildings, the application should be by petition, as it is practically a payment out to a body who undertake to apply it in a certain way (*Ex parte Jesus College, Cambridge* (1884), 50 L. T. 583).

Where applications are made that the money paid in under the Lands Clauses Act may be applied in improvements under the Settled Land Acts, the proper procedure would appear to be by summons, but if it is cheaper or more expeditious to proceed by petition, the applicant may proceed in that way, and will be allowed the costs of a petition. His choice, however, rests with himself and he makes it at his own peril (*In re Bethlehem and Bridgerell Hospitals* (1885), 30 Ch. D. 541; and see CHITTY, J., in *Re Broadwood* (1886), 55 L. J. Ch. 646, on the cases where petitions are preferable to summonses).

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Applications for investment may be made by petition if the matter is complicated (*Re Stafford's Charity* (1887), 57 L. T. 846; *Re Jackson*, W. N. (1894) 50), or if it is not more expensive (*Re de Grey's Estate*, W. N. (1887) 241; *Re Hargreave's Trust* (1888), 58 L. T. 367).

Where on petition a sum is ordered to be paid out to be applied in the construction of a sewer, and it is found that a further sum under £1,000 is necessary, the proper procedure is to apply by supplemental petition, and the body paying in will be ordered to pay the costs of both (*Re Sanders* (1894), 70 L. T. 755).

**Practice generally.**—*Death of party applying.*—After an order had been made for inquiries, on a petition for payment out, the sole petitioner died, but leave was given to the executors to carry on the petition (*In re Atkin's Estate* (1875), 1 Ch. D. 82; *Re Youl* (1873), L. R. 16 Eq. 107). Similarly, where a rector died, the proceedings were carried on with the consent of the new rector (*Ex parte Rector of Lea* (1852), 21 L. J. Ch. 776; and see *Re Staggoll* (1867), 15 W. R. 974).

Before the Judicature Acts a petitioner was substituted in a case where the petitioner died after a petition under the Leases and Sale of Settled Estates Act had been served and advertised (*In re Wilkinson's Settled Estates* (1869), L. R. 9 Eq. 71).

By Order 17, r. 4, of the Rules of the Supreme Court, the order for a new party is obtained *ex parte* in the Chancery Division by petition "of course" at the registrar's chambers, or motion handed to the registrar in court.

**Consent of Charity Commissioners.**—The sanction of the Charity Commissioners is not required for a reinvestment of a fund belonging to a charity (*Re Lister's Hospital* (1855), 6 D. M. & G. 184), as to which see *Braund v. Earl of Devon* (1868), L. R. 3 Ch. 800, p. 806; *In re Cheshunt College* (1855), 1 Jur. (N.S.) 995; cf. *In re St. Giles' Volunteer Corps* (1858), 25 Beav. 313; *Re William of Kyngeston's Charity* (1881), 30 W. R. 78. As to whether their sanction is required when the money is paid out or applied under the Act, see notes to s. 69, *ante*, p. 151.

As to the consent of the Board of Agriculture in the case of money in court in respect of land belonging to a college, see *Ex parte King's College, Cambridge*, [1891] 1 Ch. 333.

**Dealing with other funds on same application.**—If there are other funds in court besides that paid in under the Lands Clauses Act, they may be dealt with on the same application (*Re Southampton and Dorchester Rail. Co., Ex parte King's College, Cambridge* (1852), 5 De G. & Sm. 621). Similarly funds paid in by different companies under the Lands Clauses Acts may be dealt with on the same application (*Ex parte Sheffield* (1855), 21 Beav. 162), and when two funds paid into court under the Lands Clauses Act have been dealt with by different judges of the Chancery Division, the court will give leave to present one petition in both matters in one court (*In re Lord Arden's Estates* (1875), L. R. 10 Ch. 445, and see *Re Brouse's Trusts* (1866), 14 L. T. (N.S.) 37). And where both funds are to be invested together in the purchase of land, the proper course is to make one application, and if two are made the costs of one only may be allowed (*In re Gore-Langton's Estates* (1875), L. R. 10 Ch. 328).

Where an order has been made in one branch of the division subsequent applications should be made to the same branch. (Order 5, r. 9 (2), of the Rules of the Supreme Court.)

The transfer from one judge of the Chancery Division is made by the Lord Chancellor, under Order 49, r. 1, and not by the Lords Justices as formerly (*Re Boyd* (1875), 1 Ch. D. 12, and see Memorandum, 1 Ch. D. 41. The

usual course is to obtain the consent of the parties in writing and enter a petition to the Lord Chancellor, which is left with his secretary at the House of Lords. If consent of the parties is not obtained, application should be made to the Lord Chancellor in court. (See Memorandum, 1 Ch. D. 41.)

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**Service.**—As to the persons who ought to be served, see notes to s. 80, where the question of costs is dealt with.

**Form of petition or summons.**—When the company apply for the payment out on behalf of the person entitled, the petition or summons should be sealed with the seal of the company (*Ex parte Maidstone Rail. Co.* (1883), 25 Ch. D. 168; *In re Madgwick* (1883), 25 Ch. D. 371).

The summons should be an originating summons, unless there has been any previous dealing with the fund, then an ordinary summons is required. See "Daniel's Chancery Forms," 5th ed., pp. 1112, *et seq.* By Order 71, r. 1 (a) "originating summons" means every summons other than a summons in a pending cause or matter. By Order 54, r. 4B, an originating summons is required to be in the Forms Nos. 1A, 1B, 1G, or 1H, Appendix K, with such variations as circumstances require. It is to be prepared by the applicant or his solicitor, and sealed in the central office, such sealing to be deemed the issue; the person obtaining the summons must leave at the central office a copy, which shall be filed and stamped. The stamp is 10s. The name and address of applicant must be given, and a certificate is required that no previous application has been made in the matter.

The practice on originating summons is regulated by Rules of the Supreme Court, Orders 54, 54A, 54B and 54C.

**Title to summons or petition.**—From the table of titles given in the Annual Practice, 1902, p. 1068, as adopted by the Practice Masters, it is provided that in all cases where a petition is presented, or an originating summons is issued under the authority of an Act of Parliament, the petition or summons must be entitled in a substantial matter (*as the first title*), and also in the matter of the particular Act as well as any general Act applicable. If it be a railway or other local Act, and under its powers a portion of any estate under settlement, or of any estate of any testator or intestate has been taken, the petition or summons must be entitled in the manner of such settlement, or of the estate of such testator or intestate, and in the matter of the credit to which the money has under the special Act been paid, and in the matter of the general Act or Acts.

The following examples are given :

*Example I.*

19 , W., No

In the matter of the Estate of G. W., deceased.

*Ex parte* the Railway.

In the matter of the Railway Act, 18 , the vendors, J. S. and R. S., trustees of the estate of G. W., deceased, vendors without power of sale, and

In the matter of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869 (*as the case may be*).

*Example II.*

19 , T., No.

In the matter of the Estate of W. T., an infant.

*Ex parte* the Metropolitan Board of Works.

In the matter of the Metropolitan Street Improvement Act, 1883.

The vendor, W. T., an infant.

In the matter of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869.

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19                      , J., No.                      .  
In the matter of the trusts of the settlement made on the marriage of J. J. and S., his wife.

*Ex parte* the Metropolitan Board of Works.

In the matter of the Metropolitan Street Improvement Act. 1883.

The vendors, J. S. and R. J., trustees of settlement of J. J. and S., his wife. without power of sale.

In the matter of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869.

If land belonging to a rector, vicar, or other corporate body, then it must be entitled *ex parte* the rector, vicar, or corporate body, as the case may be, and in the matter of the Act or Acts, thus :

*Example IV.*

19                      , W., No.                      .  
*Ex parte* the Rector of W., in the county of                      .

*Ex parte* the                      Railway Company.

In the matter of the                      Railway (Additional Powers) Act, 19                      . The vendor, Rector of W., without power of sale.

In the matter of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869.

**Evidence.**—An affidavit of title is required by Order 52. r. 18, which is as follows :

Rule 18. In the case of applications under Acts of Parliament directing the purchase money of any property sold to be paid into court, any persons claiming to be entitled to the money so paid in must make an affidavit not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum claimed, or to any part thereof, or, if the petitioners are aware of any such right or claim, they must in such affidavit state or refer to and except the same.

A tenant for life must state that no other person is entitled (*Re Milne's Estate* (1863), 8 L. T. (N.S.) 199). An affidavit is usually required, even though the application deals with the income only and is made by a large public body (*Ex parte St. Mary's College, Winchester* (1866), 14 W. R. 788 ; *Re Byron's Charity*, W. N. (1883) 67). The affidavit of the clerk of the trustees of a public charity has been held sufficient (*Re Edward VI. Almshouses* (1868), 16 W. R. 841), and in one case the affidavit has been dispensed with (*Re Magdalen College, Oxford* (1880), 42 L. T. 822).

The affidavit by the tenant for life has been dispensed with when the tenant was very old and infirm, and the executors of the will under which she claimed had made an affidavit (*Re Smith's Leaseholds* (1866), 14 W. R. 949 ; but see *Ex parte Hollick* (1846), 4 Rail. Cas. 498).

The affidavit ought not to be made by the solicitor of the applicant, but by the applicant himself (*Re London and North Western Rail. Co.* (1852), 1 W. R. 60). But in case of illness the order has been made on the affidavit of the solicitor (*In re Halsey's Estate*, W. N. (1870) 68).

The affidavit of one of four joint mortgagees has been held sufficient (*In re Vale of Neath Railway Act*, W. N. (1866) 78), and where ten persons applied for payment out of the fund, being each entitled to a share in the fund under a will, the affidavit of the surviving trustee of the will was held sufficient (*In re Batty's Trusts*, W. N. (1877) 212).

When a person claims to be entitled to a fund on his attaining twenty-one, the affidavit of an independent person is usually required as to his age, but

an affidavit by himself verifying his certificate of baptism has been accepted (*In re Bulley's Settlement*, W. N. (1886) 80).

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*Proof of no incumbrance.*—Where money in court represents real estate, there must be an affidavit that there are no incumbrances. In applications for payment out of money under the Lands Clauses Acts, such affidavit is always required, and it ought to be made by the applicant. A tenant in tail, for example, who executes a disentailing deed, and so becomes entitled to payment out, should make such an affidavit (*Williams v. Ware* (1888), 57 L. J. Ch. 497; *Thornhill v. Millbank* (1864), 12 W. R. 523).

*Married woman.*—In cases prior to the Married Women's Property Act, 1883, where the fund belonged to a married woman or widow, an affidavit of no settlement was required (*Elrington v. Elrington* (1859), 4 Drew. 545). The affidavit was required to state either that there was no settlement at all, or that there was a settlement (which had to be produced), and that it did not affect the fund. It was not sufficient to say that the fund was not settled (*Britten v. Britten* (1846), 9 Beav. 143, see note thereto for form of affidavit). The affidavit of no settlement in the case of married women, was required to be made by the husband and wife, but when the husband was abroad, the court has acted on the affidavit of the wife only (*Elliot v. Remington* (1839), 9 Sim. 502; *Wilkinson v. Schneider* (1870), L. R. 9 Eq. 423; *Ecart v. Chubb* (1875), L. R. 20 Eq. 454). When both husband and wife were abroad, the affidavit of their solicitor was accepted (*Woodward v. Pratt* (1873), L. R. 16 Eq. 127). In case of very small amounts, the affidavit has been dispensed with (*Veal v. Veal* (1867), L. R. 4 Eq. 115; *Guest v. Neames*, W. N. (1884) 227).

As the Married Women's Property Act, 1882, s. 19, expressly excepts settlements, the old practice is still continued, and an affidavit of no settlement is required to be made by the husband and wife.

In case of a woman marrying or becoming a widow after the order has been made, r. 61 of the Supreme Court Funds Rules, 1894, provides as follows :

Rule. 61. When funds in court are by an order directed to be paid, transferred, or delivered to a woman in her own right who is not married at the date of the order, or who, being married at that date, shall become a widow, and such woman shall marry before payment, transfer, or delivery of such funds, upon an affidavit of such woman and her husband that no settlement or agreement for a settlement whatsoever has been made or entered into, before, upon, or since their marriage, or in case any such settlement or agreement for a settlement has been made or entered into, then upon an affidavit of such woman and her husband identifying such settlement or agreement for a settlement, and stating that no other settlement or agreement for a settlement has been made or entered into as aforesaid, and an affidavit of the solicitor of such woman and her husband that such solicitor has carefully perused such settlement or agreement for a settlement, and that, according to the best of his judgment, such funds are not, nor is any part thereof, subject to the trusts of such settlement or agreement for a settlement, or in any manner comprised therein or affected thereby, such funds shall be paid, transferred, or delivered to such woman without the intervention or concurrence of her husband in the same manner as if she had remained unmarried. When payments not exceeding £50 per annum are by an order directed to be made to a mother as guardian of her infant children, and such mother marries after the date of the

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said order, such payments may be made to her, notwithstanding her marriage, on her separate receipt.

**Time for application.**—The tenant for life is entitled to the dividends of the purchase money, if the promoters of the undertaking have taken possession. He is, therefore, entitled to apply for investment of the fund in court, although the conveyance has not been executed, unless he has behaved in a manner to disentitle him to such dividends (*Re Wrey's Settlement* (1865), 13 W. R. 543, and see *Re Hungerford* (1855), 1 K. & J. 413). The dividends have also been ordered to be paid to the tenant for life, although there was a dispute as to the parties to the conveyance (*Ex parte Cofield* (1847), 11 Jur. 1071).

**Forms of order.**—For forms, see 3 Seton, 6th ed., 2417 *et seq.*

### 1. Orders to pay Dividends.

**Private trustees.**—The court may direct the payment of the dividends to the trustees or either of them. This is not an unusual form (*In re Clinton* (1860), 6 Jur. (N.S.) 601; *In re Coulson*, W. N. (1867) 233; *In re Pryor's Settlement*, W. N. (1876) 141; *In re Foy's Trusts* (1875), 23 W. R. 744). It would appear, however, that if new trustees are substituted for the old ones that a new application would be necessary under such an order, and it would be better that the order should direct payment to the trustees or to the survivors or survivor, and after the death or retirement or discharge of these trustees then to the trustees for the time being of the settlement. See *In re Metropolitan Rail. Co. and Maire*, W. N. (1876) 245; *In re Goe's Estate* (1854), 3 W. R. 119; *In re Pryor*, W. N. (1876) 141.

**Co-partners.**—When money is ordered to be paid to any persons as co-partners, such money may be paid to any one or more of such co-partners, or to the survivor of them (Supreme Court Funds Rules, 1894, r. 63).

**Legal representatives.**—When money in court is ordered to be paid to any persons as legal representatives, it may be paid to the survivors or survivor on proof of the death of any of such representatives (Supreme Court Funds Rules, 1894, r. 64).

**Successive life tenants.**—On the petition of a man and his wife who had successive life interests an order was made for payment to the wife for life, and after her death to the husband for his life (*In re Howe's Trust* (1850), 15 Jur. 266). A similar order was made in the case of a mother and daughter, but the court refused in the same order to direct the transfer of the fund on the death of the survivor (*In re Lowndes's Trust* (1851), 20 L. J. Ch. 422, and see to the same effect *In re Brent's Trust* (1860), 8 W. R. 270). If the order is not so made a fresh application will be necessary (*In re Joliffe's Estate* (1870), L. R. 9 Eq. 668).

**Charities.**—The order may be made for payment of the dividends to any two of the present trustees or to any two of the trustees for the time being (*In re Collins' Charity* (1851), 20 L. J. Ch. 168).

The dividends have also been ordered to be paid to the secretary, and to his successors, the secretaries for the time being of the trustees of the charity, there being no treasurer (*Re Codrington's Charity* (1874), L. R. 18 Eq. 658).

**Ecclesiastical property.**—Where church land had been taken the dividends were ordered to be paid to the then vicar of the parish, and the churchwardens and overseers of the poor for the time being or either of them (*Ex parte Churchwardens of Bicester* (1848), 5 Rail. Cas. 702).

Where money was in court in respect of the purchase of land belonging to the Archbishopric of Canterbury, an order was made directing the

dividends to be paid to the present Archbishop, so long as he shall continue Archbishop of Canterbury, and afterwards to the Archbishop of Canterbury for the time being (*Ex parte Archbishop of Canterbury* (1848), 5 Rail. Cas. 699).

In case of lands held by corporations sole for charitable purposes the order usually directs the payment of the dividends to the rector or vicar for the time being. See *Re Davenant* (1854), 2 W. R. 344 ; *In re Pearce* (1857), 24 Beav. 491 ; *Re St. Benet's* (1865), 12 L. T. (N.S.) 762 ; *Attorney-General v. Brandreth* (1842), 1 Y. & C. C. 200 ; Order, p. 202.

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## 2. Form of Order for Application of Moneys.

For forms of order directing the application of the moneys in court in discharge of incumbrances, in investment in land, erection of buildings or other improvements, and for payment out to persons absolutely entitled, see Seton, 6th ed., pp. 2426 *et seq.*

In cases of reinvestment in land the usual form is to approve the investment, and direct an inquiry as to whether a good title can be made, and, if so, to direct a conveyance, to be settled by the judge, and on the execution thereof direct the fund in court to be dealt with as directed in the schedule. See *Ex parte Franklyn* (1847), 1 De G. & Sm. 528 ; *Ex parte Maherell* (1851), 20 L. J. Ch. 629.

In some cases where the amounts were small or for other reasons the inquiry has been dispensed with, see Seton, p. 2430, and cases there cited which are not reported, and *Re Blomfield* (1876), 25 W. R. 37.

A provisional contract is usually made prior to application, and evidence of fitness stating the nature of and facts relating to the land is produced at the time of application (*Re Kinsey* (1863), 1 N. R. 303 ; *In re Caddick* (1853), 9 Hare App. lxxxv.). The inquiry as to title is a general one, and not merely as to whether it is good according to the conditions of sale (*Upperton v. Nickolson* (1871), L. R. 6 Ch. 436 ; *Laurie v. Lees* (1880), 14 Ch. D. 249, 255 ; *Meyrick v. Laws* (1864), 34 Beav. 58). As to what title will be accepted, *Re Sheffield and Rotherham Rail. Co.* (1853), 1 Sm. & G. App. iv. ; *Ex parte Vicar of East Dereham* (1852), 21 L. J. Ch. 677.

**71.** If such purchase money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled ; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees ; but such last-mentioned application of the moneys shall not be made unless the promoters of the undertaking approve thereof, and of the trustees named for the purpose ; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with

Sums from  
£20 to £200  
to be  
deposited  
or paid to  
trustees.

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“Such purchase money” means the money referred to in s. 69.

“In the manner hereinbefore directed,” i.e., pursuant to ss. 69, 70. As to sums paid under contract with persons not absolutely entitled, see s. 73.

“Shall not amount to two hundred pounds.”—When the money does amount to £200, ss. 69 and 70 apply. Where the amount paid into court exceeded £200, but after an investment in the purchase of land, a sum of £70 only remained, that sum was paid out to two trustees nominated under this section by the tenant for life (*Re Kinsey* (1863), 1 N. R. 303).

In one case where the residue was £30, the court allowed it to be paid out to the tenant for life on his undertaking to lay it out in permanent improvements (*Ex parte Barrett* (1850), 19 L. J. Ch. 415). But, generally, the court will not allow the amount to be paid out to the tenant for life, when it exceeds £20 (*In re Bateman* (1852), 21 L. J. Ch. 691). As to cases where the residue is £20, or under, see next section.

In an order made under the Light Railways Act, 1896 (59 & 60 Vict. c. 48), the limit may be raised to £500 (s. 14).

Sums not exceeding £20 to be paid to parties.

**72.** If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit; or in case of the coverture, infancy, idiocy, lunacy, or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

“The same shall be paid to the parties entitled,” etc.—As to who are the parties, see note to s. 70, *ante*, p. 153. Where the residue of the fund in court, after an investment in land, does not exceed £20, it will be paid out to the party entitled to the rents and profits (*Re Lord Egremont* (1848), 12 Jur. 618; *Ex parte Rector of Loughton* (1849), 5 Rail. Cas. 591; *Re Hichin's Estate* (1853), 1 W. R. 505; *cf. Vicar of Bredicot* (1848), 5 Rail. Cas. 209).

*Coverture.*—Since the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), this section will not be applicable to such property as a married woman has power of disposing of under that Act (s. 1 (1)).

All sums payable under contract with persons not absolutely entitled, to be paid into bank.

**73.** All sums of money exceeding twenty pounds, which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him, absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or

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in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels or other accommodation works, or for assenting to or not opposing the passing of the Bill authorising the taking of such lands, but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery [*in England or the Court of Exchequer in Ireland*] (a), or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

(a) These words were repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

**"All sums of money exceeding twenty pounds":** cf. this with s. 70, 71, *ante*, pp. 152, 163.

**"Under a contract."**—See s. 7, and notes thereto, *ante*, p. 17.

This section in no way affects the right of persons under disability to contract with promoters of an undertaking. A tenant for life may enter into any agreement that so much money shall be paid to him for compensation by severance or otherwise. The mere fact that the agreement makes it payable to him will not vitiate the contract. The section only applies as between him and the parties entitled to the inheritance. If he receives the money, he holds it in trust for them according to the provisions of the statute. The promoters, however, should pay the money into court, and this will be a fulfilment of the agreement to pay to him; the court having power to allot to him such portion of the sum as compensation for such injury as he may sustain (*Taylor v. Chichester and Midhurst Rail. Co.* (1870), L. R. 4 H. L. 628).

**"To retain to his own use."**—A tenant for life who retained for his own use the sum of £3,000, paid to him in consideration of not opposing a line of railway was ordered to pay it into court (*Pole v. Pole* (1865), 2 Dr. & Sm. 420, and see case cited in preceding note).

Where the promoters agreed to pay the tenant for life interest at 5 per cent. on the purchase money from the date of the agreement until a conveyance should be executed, the tenant for life was allowed to retain it in the absence of any fraud (*In re Hungerford* (1855), 1 Jur. (N.S.) 845).

**"To allot . . . a portion . . . for any injury," etc.**—Where part of a manor was taken, the lord of the manor who was tenant for life claimed a portion of the money paid into court as representing the fines for enfranchising, as copyhold lands when taken under this Act are required to be enfranchised by s. 96 (see *post*, and note thereon). But as no fees are paid for enfranchisement under that section, it was held that he was entitled to no portion of the fund in court. The tenant for life gets instead the

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interest on the money paid in for compounding all fines, rents, and other services (*Re Sir T. M. Wilson's Estates* (1863), 32 L. J. Ch. 191).

A claim by a tenant for life without impeachment of waste in respect of minerals under the estate, which might have been worked out in his life, was also refused, and the income only ordered to be paid to him (*In re Robinson's Settlement Trusts*, [1891] 3 Ch. 129).

But where money was paid in respect of the non-working of coal mines under s. 78 of the Railways Clauses Act, 1845, and the tenant for life under the lease was entitled to dead rent and royalties, and the coal would have been worked out in two years, the tenant for life was held entitled to more than the interest. The principle of apportionment was to treat the money as rent accruing *de die in diem* to the tenant for life for the period during which the coal would have been worked out (*Cardigan v. Curzon House* (1898), 14 T. L. R. 550).

Where a company, in order to obtain the withdrawal of opposition to a bill, agreed to pay a sum of money for the construction of a new road, and paid the same into court, a claim to have this sum paid to the tenant for life was refused, but an inquiry directed as to what part of that sum ought to be paid to him for his expenses in making the new road, and the rest was ordered to be invested (*Re Duke of Marlborough's Estates* (1849), 13 Jur. 738).

Small sums have been paid to the tenant for injury, inconvenience, and annoyance (*Ex parte Rector of Little Steeping* (1848), 5 Rail. Cas. 207; *Re Collis's Estate* (1866), 14 L. T. (N.S.) 352, where the jury had assessed the amount for such inconvenience). Where part of a glebe was taken by a railway company, and the rector suffered considerable annoyance from the works during the construction of the railway, which annoyance was considered in settling the compensation, the court ordered £100 to be paid to him out of the purchase money (*In re Saunderton Glebe Lands, Ex parte Rector of Saunderton*, [1903] 1 Ch. 480).

*In respect of costs arising under the Act.*—The Lands Clauses Act constitutes the tenant for life an agent, and imposes upon him the duty of doing the best he can for the estate; he is, therefore, entitled to be repaid all costs and charges properly incurred by him in so doing.

Thus, if he has to pay the costs of an arbitration for ascertaining the price of land taken, owing to the company having offered more than the amount awarded, he will be allowed these costs out of the fund in court if he was justified in requiring an arbitration (*In re Earl of Berkeley's Will* (1874), L. R. 10 Ch. 56; *In re Aubrey's Estate* (1853), 17 Jur. 874). Such costs have also been allowed to a perpetual curate (*Ex parte Whitworth* (1871), 24 L. T. (N.S.) 126).

Costs of preliminary negotiations will also be allowed (*In re Strathmore Estates* (1874), L. R. 18 Eq. 339; *In re Oldham's Estate*, W. N. (1871) 190).

Where the company after paying the purchase money of glebe lands into court, were ordered to pay the cost of investment, but became insolvent before doing so, an order was made for sale of some of the fund in court for the purpose of paying the rector's costs (*In re Glebe Lands of Yeldham* (1869), L. R. 9 Eq. 68).

A mortgagee will probably be allowed out of the fund the costs of an inquiry as to the value of the land beyond those allowed on taxation between the public body and himself, but the courts do not make a special order in respect thereof, but the ordinary inquiry will be ordered and would appear sufficient if the extra costs have been properly incurred. See *Rees v. Metropolitan Board of Works* (1880), 14 Ch. D. 373; *Blackford v. Davis* (1869), L. R. 4 Ch. 304).

*In respect of costs of opposing a bill.*—The costs of opposing a bill in Parliament could not be allowed out of the fund in court under the Lands Clauses Act, because no duty to oppose is imposed by that Act upon the

tenant for life (*In re Earl of Berkeley's Will* (1874), L. R. 10 Ch. 56; but see *In re Nicholl's Estate*, W. N. (1877) 154).

The Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 36, however, enacts as follows:

36. The court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges, or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

It has also been held that the court, under its general jurisdiction, had power to direct the payment of costs of opposing a bill out of the capital money, and has so ordered when the costs were incurred prior to 1883 (*In re Ormrod's Settled Estate*, [1892] 2 Ch. 318; followed in *In re London County Council, Ex parte Pennington* (1901), 84 L. T. 808; 65 J. P. 536).

In the case of a municipal corporation, see *Attorney-General v. Mayor of Brecon* (1878), 10 Ch. D. 204.

*Practice.*—The practice will be governed by the same rules as in the case of proceedings under s. 70; see note "Applications for investment," *ante*, p. 155.

In cases where the tenant for life claims a portion of the fund under this section, the remainderman should be either made a co-petitioner or should be served (*In re Strathmore Estates* (1874), L. R. 18 Eq. 339; *Re Collis's Estate* (1866), 14 L. T. (N.S.) 352).

**74.** Where any purchase money or compensation paid into the bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery [*in England or the Court of Exchequer in Ireland*] (a), on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Court of Chancery may direct application of money in respect of leases or reversions as they may think just

(a) These words have been repealed by the Statute Law Revision Act, 1892.

This section is substantially the same as s. 34 of the Settled Land Act, 1882, the latter being apparently copied from s. 74. Decisions on the effect of one of those sections will, therefore, be authorities in respect of the other. See *Cottrell v. Cottrell* (1885), 28 Ch. D. 628.

"Under the provisions of this or the special Act."—This refers to ss. 69, *ante*, p. 131, and 76, *post*, p. 171.

"Laid out, invested."—As to investments, see notes to ss. 69 and 70.

Where certain leasehold houses were bequeathed to a person for life, and on death to certain other persons, the purchase money was allowed to be laid out in the purchase of copyhold lands to be held by two trustees upon trust for the leaseholder for life, and on her death upon trust to sell and hold the moneys for the persons entitled (*In re Coyte's Estate* (1851), 1 Sim. (N.S.) 202).

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Similarly, the purchase money of leaseholds has been allowed to be laid out in purchase of the absolute reversion in fee of other leaseholds, the land being conveyed to a trustee for the persons interested (being infants), their executors and administrators, until they should attain twenty-one, and afterwards to them and their heirs (*In re Brasher's Trust* (1858), 6 W. R. 406).

The court will sanction the money being laid out in the purchase of freeholds if the proposed investment is substantially a settlement to like uses (*In re Parker's Estate* (1872), L. R. 13 Eq. 495).

**"In respect of any lease."**—The construction of this section appears to have been discussed in the Court of Appeal for the first time in *Askew v. Woodhead* (1880), 14 Ch. D. 27. Taking the simple case of a leasehold settled upon a person for life, with a limitation over on his death, and another person absolutely, the parties interested would get the same benefit as nearly as may be, said JESSEL, M.R., "by investing the money in the purchase of an annuity having as many years to run as there were years remaining in the term, and by paying it to the tenant for life, and after his death, if the tenant for life dies within the term, then to the remainderman. Generally an annuity cannot thus be purchased which will bring in as large an income as the leasehold, but sometimes it can. The same principle must apply whether it is more or less. If an annuity is not actually bought it must be referred to an actuary to calculate what yearly sum, if raised out of the dividends and corpus of the fund, will exhaust the fund in the number of years which the lease had to run" (p. 34). This yearly sum will be ordered to be paid to the tenant for life till the end of the term or till his death. There is nothing in the Act which says that the tenant for life is only to receive the same income as before. The case of *In re Pfleger* (1868), L. R. 6 Eq. 426, where the order directing an annuity equal to the previous income to be purchased, was not approved. *In re Phillip's Trust* (1868), L. R. 6 Eq. 250, was approved (p. 36). Notwithstanding that a previous order had been made, KAY, J., made an order in *In re Hunt's Estate*, W. N. (1884) 181, dividing the fund according to the principle laid down in the above case of *Askew v. Woodhead*. This case has also been followed in Ireland, the interest being taken at three per cent., and the sums calculated for half-yearly payments (*In re Walsh's Trusts* (1881), 7 L. R. Ir. 554; *In re South City Market Co.* (1884), 13 L. R. Ir. 245).

For an order framed on this principle, see 3 Seton, 6th ed., pp. 2447 *et seq.*

Other methods of distribution will not now be allowed save by consent. For methods of division prior to *Askew v. Woodhead*, see *Re Treacher's Settlement* (1868), 18 L. T. (N.S.) 810; *Littlewood v. Pattison* (1864), 10 Jur. (N.S.) 875; *Jeffrey v. Conner* (1860), 28 Beav. 328; *Re Birch* (1864), 10 Jur. (N.S.) 673; *Re North*, W. N. (1868) 148.

Where the tenant for life had only received the dividends and the term ended in her lifetime, she was held entitled to the corpus (*In re Beanfoy* (1852), 1 Sm. & G. 20; and see *Phillips v. Sargent* (1848), 7 Hare, 33).

And if a tenant for life has only received the dividends and dies before the term ends, his personal representatives will, no doubt, be entitled to a share of the corpus, calculated on the principle laid down in *Askew v. Woodhead*. See *In re Money's Trusts* (1862), 2 Dr. & Sm. 94.

Where the lease is renewable, so that practically the property is held in perpetuity and it is taken compulsorily, the tenant for life will only be entitled to the dividends and not to the corpus, although his income may be thereby diminished (*In re Wood's Estate* (1870), L. R. 10 Eq. 572; and see *Muddy v. Hale* (1876), 3 Ch. D. 327, and *In re Barber's Settled Estates* (1881), 18 Ch. D. 624).

Where the sons of a testator were entitled to hold leasehold premises at a reduced rent as long as they or either or the survivor might carry on business

therein, they were held entitled to the value of this interest less a reduction for the possibility of their ceasing to carry on business (*Penny v. Penny* (1868), L. R. 5 Eq. 227).

The word "lease," by the definition (s. 3, *ante*, p. 5), includes an agreement for a lease; and see *In re King's Leasehold Estates* (1873), L. R. 16 Eq. 521.

**"Reversion dependent on any such lease."**—When the purchase money is paid in, in respect of a reversion, the principle of division as between the tenant for life and the remainderman is different.

If a tenant for life is receiving rent as lessor, he is not entitled when the land is taken to any more than such rent unless he outlive the period of the term. It follows, therefore, that if land has been let at less than a rack-rent the interest arising from the purchase money will probably exceed the former rent. To this excess the tenant for life is not entitled as it is in fact part of the reversion. The usual order is to direct payment to the tenant for life of the income he had before and order the rest to be accumulated. By this method the full value of the fee will be in court by the end of the term (*In re Wooton's Estate* (1866), L. R. 1 Eq. 589, and *cf. In re Bowyer's Settled Estates*, W. N. (1892) 48; but see *In re Steward's Estate* (1853), 1 Dr. 636, which has not, however, been followed).

When the date arrives at which the lease would have fallen in, the tenant for life will then be entitled to the full income arising from the fund in court (*In re Wilkes' Estate* (1880), 16 Ch. D. 597. See form of order to this case, p. 602).

The same principle is applied if the lease have been originally granted at a rack-rent, but the property has increased in value (*In re Mette's Estate* (1868), L. R. 7 Eq. 72; *Cottrell v. Cottrell* (1885), 28 Ch. D. 628).

Where minerals which had been let on lease were devised to a person for life without impeachment for waste, and the lessee gave notice of his intention to work them to a railway company, who required them for support, and whereupon the lessor's interest was assessed and paid into court, it was held that the money might be paid out to the tenant for life as they were not of such an extent that they could not be got during his life (*In re Barrington, Gamlen v. Lyon* (1886), 33 Ch. D. 523; *Cardigan v. Curzon Howe* (1898), 14 T. L. R. 550; but *cf. In re Robinson's Settlement Trusts*, [1891] 3 Ch. 129, under s. 69).

**Church lands let on lease.**—The same principle is applied in the case of lands leased by a corporation sole. If they are taken by a railway company, the lessor will only receive the dividends equal to the amount of the rent, and the rest will be accumulated until the date when the lease would have expired, and then the lessor will be entitled to the whole dividends (*Ex parte Dean and Chapter of Gloucester* (1850), 19 L. J. Ch. 400; *Ex parte Dean and Chapter of Christchurch* (1853), 23 L. J. Ch. 149; *Ex parte Archbishop of Canterbury* (1854), 23 L. T. (o.s.) 219).

Where the property is let at a nominal rent, the whole income will be accumulated until the lease would have expired (*Ex parte Rector of Lambeth* (1846), 4 Rail. Cas. 232; *Ex parte Bishop of Winchester* (1852), 10 Hare, 137).

If leaseholds were according to custom renewable at certain intervals upon payment of fines, the court on the recurrence of every period at which, if the land had not been taken, the lease might have been renewed, will authorise the payment out of the fund arising from the purchase money and its accumulations, a sum equivalent to such fine (*Ex parte Precentor of St. Paul's* (1855), 1 K. & J. 539), or to the difference in the amount of the fine caused by part of the land being taken (*Ex parte Bishop of Winchester* (1852), 10 Hare, 137). But where renewable leaseholds, being under notice to treat by a company were not renewed, and the company proved abortive, but the

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land was taken by another company, the vendors were held not to be entitled to any part of the money by way of compensation for the fine they omitted to take in consequence of the first notice (*Ex parte Dean of Westminster* (1854), 18 Jur. 1113). In cases of church lands let on lease, the court will probably allow the money paid in respect thereof, to be laid out for the benefit of the living or see (*Ex parte Rector of Lambeth* (1846), 4 Rail. Cas. 231).

Where the land was available for building purposes and the corporation were in the habit of accepting surrenders of leases and re-granting them at larger rents for building purposes, the court ordered all the dividends to be paid to the corporation (*Re Dean of Westminster* (1858), 26 Beav. 214).

Where a lessee and a dean and chapter together agreed for a certain sum to sell the land held in lease, and the money was paid into court, the court refused to apportion the lessee's share, but by consent ordered the money to be invested and the dividends paid to the lessee until the expiration of the lease, he undertaking to pay the rent reserved by the lease (*Ex parte Ward* (1848), 2 De G. & Sm. 4). An inquiry would now be probably made as to their respective interests, and the fund apportioned accordingly. See s. 78, and note "May order distribution," *post*, p. 175.

Where no object would be attained by accumulating, the court has ordered the whole dividends to be paid, as, for example, where land which had been let on lease was vested in trustees in trust for the repair of a church (*Ex parte Trustees of St. Thomas's Church Lands, Bristol*, and *Ex parte Trustees of Temple Church Lands, Bristol* (1870), 23 L. T. (N.S.) 135).

*Practice.*—For procedure under this section, see the notes to s. 70, note "Applications for investments," *ante*, p. 155.

The remainderman ought probably to be served with the summons or made a respondent to a petition under this section, at least if there is any question between him and the tenant for life. See *In re Crane's Estate* (1869), L. R. 7 Eq. 322, where the company were ordered to pay the costs occasioned thereby.

Upon deposit being made, the owners of the lands to convey, or in default the lands to vest in the promoters of the undertaking upon a deed poll being executed.

**75.** Upon deposit in the bank in manner hereinbefore provided (a) of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey (b) such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such

default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein ; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices, as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking ; and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

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(a) See ss. 69, 71—73, and s. 76.

(b) See s. 7. As to conveyances, see ss. 81—83.

“By jury,” etc.—For the different methods of assessment, see s. 21, and note “Shall be settled in manner hereinafter provided,” *ante*, p. 46.

The case where the amount of compensation claimed is under £50 is omitted from the list (s. 22, *ante*, p. 48). The case where the interest is that of a yearly tenant is also omitted, but conveyance in such a case would appear to be unnecessary. See s. 121, and notes thereto, *post*.

**76.** If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the bank, in the name and with the privity of the Accountant-General of the Court of Chancery [*in England or the Court of Exchequer in Ireland*], (a) to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them, so far as the promoters of the undertaking can do,) subject to the control and disposition of the said court.

Where parties refuse to convey, or do not show title, or cannot be found the purchase money to be deposited.

**Sect. 76.** (a) These words have been repealed by the Statute Law Revision Act, 1892.

**NOTE.**

**"If owner . . . fail to make out a title."**—The meaning of this part of the section was fully discussed by Lord HATHERLEY, when Vice-Chancellor, in the case of *Douglass v. London and North Western Rail. Co.* (1857), 3 K. & J. 173. In that case he expressed the opinion that the term "owner" must mean a person having some title, and that the failure to make out a title must arise from an independent estate or interest outstanding in a third party—such as a right of dower, or rentcharge by way of jointure—where such party is under no legal or equitable obligation to concur in the sale, but which does not displace the owner's title. The owner being seised of the lands would be competent to contract, but might fail to make out a title to the satisfaction of the promoters by reason of the outstanding estate or interest. In this particular case it was held that a surviving partner selling partnership lands in discharge of his duty, as survivor in order to wind up the partnership, is an owner within the meaning of s. 76. But where such partner agrees to show a sixty years' title, and fails to make out more than a thirty-six years' title, the court cannot compel the company to deposit the purchase money in the bank under this section, but may compel the company to abandon the possession taken under the contract (p. 184).

The above construction was followed with approval by FRY, J. He held that where owners of land agreed to sell land to promoters, but failed to make out any title to a small portion, that the promoters could not acquire the strip by procedure under ss. 76, 77, as they were not in any respect owners of the strip. Specific performance of the agreement was enforced against the promoters as to the rest of the land, as they had proceeded with the contract after knowledge of want of title to the strip (*Wells v. Chelmsford Local Board* (1880), 15 Ch. D. 108).

In an old case under a special Act, it was held that promoters after the price had been agreed or awarded could not at once pay the money into court and obtain a good title under this section. They must first call upon the owner to make out a good title (*Doe d. Hutchinson v. Manchester, etc. Rail. Co.* (1845), 15 L. J. Ex. 208).

If persons under disability sell and a title can be made with the consent of others, this is not failure to make a title or refusal to convey if such consent is not obtained. Thus if the governors of a school sell, the official trustees of charitable funds are not bound to receive payment (*In re Leeds Grammar School*, [1901] 1 Ch. 228).

*Costs of proving title.* See notes to s. 80, *post*.

If the party in possession has shown no title, the proper course would appear to be, if the owner cannot be found, to proceed under s. 58 and pay the money into court under this section (*Re Winder* (1877), 6 Ch. D. 696, p. 705, and see notes to next section. As to the rights of persons in possession, see s. 79, *post*, p. 176).

If the ownership is in dispute, s. 58 does not apply, and resort should be had to the jury clauses or entry may be made by agreement with the rival claimants and payment of the amount into court (*Ex parte London and South Western Rail. Co.* (1869), 38 L. J. Ch. 527; *In re Manor of Lowestoft* (1883), 24 Ch. D. 253; and see *Douglass v. London and North Western Rail. Co.* (1857), 3 K. & J. 173, p. 180).

**"To deposit in the bank."**—As to procedure for lodgment in the bank, see notes to s. 69, note "Prescribed by any Act for the time being in force," *ante*, p. 134, and Supreme Court Funds Rules, 1894, there cited. Section 39 of these rules is only applicable to payments in under s. 69, and does not affect payments under this section. Under this section money may be paid

in on request, giving a reference to this Act, producing a copy of the special Act and giving a proper description of the land, and stating the reason for payment in. The name of the promoters may be left out of the heading of the account. *Cf.* s. 69.

As to investment, application, and payment out of the fund in court under this section, see s. 78, and for practice generally, see notes to s. 70, *ante*, pp. 152 *et seq.*

"*Accountant-General*."—Now the Paymaster-General of the Supreme Court of Judicature. See s. 69, same note, *ante*, p. 133.

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77. Upon any such deposit of money as last aforesaid being made the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in (a); and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation, under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Upon deposit being made a receipt to be given, and the lands to vest upon a deed poll being executed.

(a) As to deposit in court, see Supreme Court Funds Rules, 1894, set out in note to s. 69, *ante*, pp. 134 *et seq.*

"All the estate in such lands of the parties . . . shall vest."—From the construction put upon the word "owner" in s. 76 (see note "If the owner fail to make out a title," *ante*, p. 172), it follows that if the promoters of an undertaking agree to purchase a larger estate or interest from a person than he possesses, there does not vest in them under this section a greater estate than that person can give them. Thus, if a person in possession, but not otherwise having a good title, agree to sell the fee simple for a certain sum to the promoters, and they, not being satisfied with his title, pay the money into court and execute a deed poll under ss. 76 and 77, they will only acquire that person's interest in the land, and the true owner will be at liberty to take proceedings, by ejectment or otherwise, against the promoters (*Re Winder* (1877), 6 Ch. D. 696; *Wells v. Chelmsford Local Board* (1880), 15 Ch. D. 108).

The promoters must protect themselves by proceeding under the other

**Sect. 77.** sections of the Act. *Cf. Gedge v. Commissioners of Works*, [1891] 2 Ch. 630; and see notes to s. 76.

**NOTE.**

The promoters cannot be compelled to proceed under ss. 76 and 77, and if an action is brought by the landowner for the amount of the compensation awarded it is a good answer that the conveyance has not been executed (*Guardians of East London Union v. Metropolitan Rail. Co.* (1869), L. R. 4 Ex. 309; *Douglas v. London and North Western Rail. Co.* (1857), 3 K. & J. 173).

As to enforcing awards generally, see s. 36, *ante*, p. 68.

Application  
of moneys so  
deposited.

**78.** Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery [*in England or the Court of Exchequer in Ireland*] (a), may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

(a) These words are repealed by the Statute Law Revision Act, 1892.

**"Application by petition."**—The application in most cases will now, under Order 55, r. 2, be by originating summons. See the practice and rules in the notes to s. 70, note "Applications for investment," *ante*, p. 155.

**"Of any party making claim to the money."**—An incumbrancer is entitled to apply under this section, and a mortgagee of land taken is entitled to payment out of the amount of his mortgage, and if the company who made the deposit take an assignment of the mortgage, the money will be paid out to them (*Re Marriage* (1861), 9 W. R. 843; and see *KINDERSLEY, V.-C.*, p. 777).

An equitable mortgagee is also entitled to be paid out the principal sum and interest, but if interest has not been paid for several years prior to the land being taken, only six years' arrears of interest will be allowed (*In re Stead's Mortgaged Estates* (1876), 2 Ch. D. 713).

Mortgagees in possession where the debt was in excess of the amount paid in were ordered to be paid all the money in court, including a sum which the arbitrator certified in respect of loss of profits (*Pile v. Pile, Ex parte Lambton* (1876), 3 Ch. D. 36).

As to lands subject to mortgages, see ss. 108—114, *post*.

**When wrongfully paid in.**—When the promoters have wrongfully paid the sum into court, the person entitled apparently may either obtain the payment of it out of court or sue the promoters for specific performance of their agreement.

Thus, where lands had been taken by a company who had taken possession after the value had been awarded and the abstract furnished, no objection being taken to it, but did not pay the purchase money, the vendors sued and obtained a decree for the amount to be paid on a certain day. Before the

day arrived, the company alleged that the abstract only showed a title to a moiety of the lands and paid the money into court:—*Held*, that the title had already been found satisfactory under the decree and the money was ordered to be paid out to the vendors (*Galliers v. Metropolitan Rail. Co.* (1871), L. R. 11 Eq. 410).

A lessee of a house which he had mortgaged, who had agreed to sell his leasehold interest in it to promoters for £400, of which £150 was apportioned to the leasehold and £250 for trade damages and personal expenses, brought an action for specific performance of the agreement. The promoters paid the money into court and executed a deed poll under ss. 76, 77, but they were ordered to pay £250 to the tenant, the court holding that the agreement to pay that sum was independent of the title. After paying it they would be entitled to receive that sum out of court. As to the balance an inquiry was ordered as to what persons were entitled to the purchase money for the leasehold interest (*Cooper v. Metropolitan Board of Works* (1883), 25 Ch. D. 472).

**"To be laid out or invested in the public funds."**—This money being cash under the control of the court, it may be invested in any of the securities sanctioned by the court (*Ex parte St. John Baptist College, Oxford* (1882), 22 Ch. D. 93). And see s. 70, note "Until the money can be so applied it may be invested," *ante*, p. 154, for a list of these securities.

**"May order distribution."**—If an occupier or owner of land claim a greater interest than that to which he can make title, and the money is paid into court, there is no provision in the Act for determining his interest, but the court will use its own machinery and will order an inquiry as to the extent of the claimant's interest and will order an amount equivalent thereto to be paid out to him, and the remainder paid to the company who paid it in (*Brandon v. Brandon* (1864), 34 L. J. Ch. 333; *Ex parte Cooper* (1865), 34 L. J. Ch. 373; *Re Hayne* (1865), 13 W. R. 492).

If there are different claimants of the amount, the court will order an inquiry as to their respective interests, as, for example, between a mortgagor and a mortgagee (*Cooper v. Metropolitan Board of Works* (1883), 25 Ch. D. 472).

Thus, where a tenant holding under a void lease claimed the value of the lease and damages for expulsion and loss of trade, and the money was paid into court, the court allowed the amount found due for the damage and ordered an inquiry as to what portion of the value of the leasehold should be paid to him for moneys expended in improvements on the faith that the lease was valid (*Ex parte Cooper* (1865), 34 L. J. Ch. 373). And see a similar order in *Re Hayne* (1865), 13 W. R. 492.

Where money had been paid into court in respect of a foreshore, and the claimants admitted that a small portion thereof did not belong to them, the court did not order the value of the land possessed by the claimants to be assessed by a jury, but apportioned the amount in court under this section (*Re Alston's Estate* (1856), 5 W. R. 189).

Where money had been paid into court in respect of freehold and copyhold lands, which a tenant for life had agreed to sell to a railway company, but he was unable to make a good title to parts of the copyhold land, the court apportioned the sum in court and ordered an amount representing the land to which a good title was made, to be carried over to a different account, and the dividends paid to the tenant for life (*Re Perk's Estate* (1853), 1 Sm. & G. 545).

Where land of an infant has been taken, the infant's mother is entitled to have the value of her dower paid out of the fund, and not merely one-third of the dividends (*In re Hall's Estate* (1870), L. R. 9 Eq. 179).

When a claim to the land is made by someone else, the money will not be

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dealt with till the claim is settled. It may in some cases be settled by serving the other parties claiming; but in the case of a claim by the Crown, the matter cannot be so settled, as the Crown cannot be brought before the court in this way (*In re Manor of Lowestoft, Ex parte Reeve* (1883), 24 Ch. D. 253; and *cf. In re St. Pancras Burial Ground* (1866), L. R. 3 Eq. 173, where the court refused to act until a second petition was brought by the Attorney-General). Prior to the Judicature Acts the Court of Chancery directed an issue to be tried in the Common Law Courts when there were rival claimants (*Ex parte Freeman of Sunderland* (1852), 1 Dr. 184). For the provision guiding the court when a possessory title is shown, see next section.

The court has jurisdiction to determine questions of title in respect of lands taken, when actions are brought against the promoters in respect thereof. See *Bogg v. Midland Rail. Co.* (1867), L. R. 4 Eq. 310; *Birmingham Land Co. v. London and North Western Rail. Co.* (1888), 40 Ch. D. 268.

*Conversion.*—Money paid in under s. 76 is converted and payable to the personal representatives of the owner (*In re East Lincolnshire Rail. Co., Ex parte Flamank* (1851), 1 Sim. (N.S.) 260); and under similar provisions in a special Act (*Ex parte Hawkins* (1843), 13 Sim. 569; *cf. Re Harrop* (1857), 3 Dr. 726, p. 733).

Under s. 69 the rule is otherwise. See s. 69, note "Moneys shall remain so deposited until applied," *ante*, p. 136. And see *In re Walker's Estate* (1853), 22 L. J. Ch. 888.

Party in  
possession to  
be deemed  
the owner.

**79.** If any question arise respecting the title to the lands in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

**"The parties respectively in possession of such lands."**—This section enables the court to order the money to be paid out to persons who claim as owners, but whose title is merely possessory, and there is no other claimant to the fund.

Thus, the court will order the money to be paid out to a person who has taken possession of vacant land, and been in undisturbed possession for a number of years (twenty-nine) (*Ex parte Webster, W. N.* (1866) 246).

So where a woman had been in possession of land since the death of her husband (eighteen years), and the heirs of her husband consented, and no claim had been made in respect thereof for some ten years previously, and it appeared that if the railway company had not taken it she would have remained in possession for more than twenty years, the court, under all the circumstances of the case, ordered the fund to be paid to such occupant (*Re Evans* (1873), 42 L. J. Ch. 357).

Where the parties in possession were mortgagees who had been in receipt of the rents and profits for forty-five years, the court ordered the dividends of the full amount to be paid to them until further order, without prejudice to any question of their liability to any other parties (*Re Cook's Estate* (1863), 8 L. T. (N.S.) 759).

In cases also where a person has been in possession for years and part of his land is taken, the court has power under this section to pay out the money to him without calling upon him to prove his title, if it be shown that it can be supported. Because a company take part of his land, his title to the whole of it ought not to be jeopardised.

The principle in these cases is that the court shall not, upon occasion of these applications for payment of purchase money, deal with the property in any way whatever which can affect the title unless it be shown so clearly as to be beyond question that there must be litigation upon the question of title (*per* PAGE WOOD, V.-C., *In re St. Pancras Burial Ground* (1866), L. R. 3 Eq. 173, p. 183).

Thus, where part of the lands of a tenant for life were taken, of which he had been in possession for some years, but there was some doubt as to his title owing to the different constructions which might be put upon an old will under which he claimed, the court ordered the dividends to be paid to him, being satisfied that the construction according to which he claimed was arguable, and that he was in possession. In such a case the duty of the company is merely to suggest any doubts as to the title to the court, but not to argue them (*Re Sterry's Estate* (1855), 3 W. R. 561; *S. C.*, *sub nom. Re Perry's Estate* (1855), 1 Jur. (N.S.) 917).

This section is also intended as a direction to the court as to how it should act in any case in which, upon an application for the money paid in or deposited, it should be unable to arrive at a satisfactory conclusion as to which party was lawfully entitled to the land (*per* KINDERSLEY, V.-C., *Ex parte Freeman of Sunderland* (1852), 1 Dr. 184, p. 189).

Thus, where petitioners were in possession of a foreshore and had exercised rights of ownership over it for more than twenty years, all of which were consistent with the documentary evidence, they were held to be entitled to the purchase money although no grant from the Crown could be produced (*Re Alston's Estate* (1856), 5 W. R. 189).

As to inquiries as to title, see note to s. 78, *ante*.

As to possession by trustees of a disused burial ground, *In re St. Pancras Burial Ground* (1866), L. R. 3 Eq. 173; *Campbell v. Mayor of Liverpool* (1870), L. R. 9 Eq. 579.

**"As being the owners thereof."**—In order that this section may apply, the person must either be in possession as owner, or he must be in receipt of the rents as being entitled thereto.

Thus, where land was taken from a lessee shortly before the expiration of a long lease for 300 years, no rent having been paid by the lessee for many years and the reversioner being unknown, the value of the lease was paid to the lessee and the value of the reversion into court. After twelve years from the date of such payment into court, the lessee applied for the fund in court on the ground that he would have acquired by that time a title to the reversion in fee if the land had not been taken. The court, however, refused the application on the ground that he was not in occupation as an occupier claiming the fee, but as owner of an unexpired term of years (*Gedge v. Commissioners of Works*, [1891] 2 Ch. 630).

In this last case the Court of Appeal expressed considerable doubt (pp. 638, 639) of the correctness of a decision by BACON, V.-C., in *Ex parte Chamberlain* (1880), 14 Ch. D. 323. In that case a person had been in possession for twenty-six years after the expiration of a term of 192 years of land which was taken by a railway company, and as there was no claim

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by or evidence of the reversioner, the money was ordered to be paid to the occupier, but it is doubtful if he was in occupation as owner within the meaning of the statute. *Cf. Ex parte Winder* (1877), 6 Ch. D. 696, and *Ex parte Hollingsworth* (1871), 19 W. R. 581, an application in regard to the same fund, and see *In re Forde*, [1894] 1 I. R. 156.

Where a person was in possession of land of which possession had been taken as a security to pay an annuity during certain lives and the last life had terminated in May, 1895, and the land was taken in 1900 and the money paid into court, the court ordered the dividends to be paid to the person in possession until the expiration of twelve years from the dropping of the last life or until further order (*In re Harris, Ex parte London County Council*, [1901] 1 Ch. 931).

Costs in cases  
of money  
deposited.

**80.** In all cases of moneys deposited in the bank under the provisions of this or the special Act, or an Act incorporated therewith, except where such moneys shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery [*in England or the Court of Exchequer in Ireland*] (a) to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such moneys in Government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and for the payment out of court of the principal of such moneys, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: Provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Court of Chancery [*in England or the Court of Exchequer in Ireland*] (a) that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

(a) These words have been repealed by the Statute Law Revision Act, 1892.

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**NOTE.**

**"In all cases of moneys deposited."**—This section is not confined to cases where moneys are deposited in the bank under sections prior to it, but extends to cases where money is deposited under subsequent sections. It thus extends to cases where money is paid in under s. 85 (*In re London, Brighton, and South Coast Rail. Co., Ex parte Flower* (1866), L. R. 1 Ch. 599; *Ex parte Morris* (1871), L. R. 12 Eq. 418; *Charlton v. Rolleston* (1884), 28 Ch. D. 237).

Where money has been paid into a bank other than the Bank of England by agreement between the parties, this section is not applicable (*Re Eastern Counties Rail. Co.* (1855), 26 L. T. (o.s.) 176).

This section is not affected by Order 65 of the Rules of the Supreme Court, which makes the costs of and incident to all proceedings in the Supreme Court in the discretion of the court or a judge, as the Rules of the Supreme Court do not overrule the provisions of special statutes giving special costs in particular cases (*Reeve v. Gibson*, [1891] 1 Q. B. 652, 660; *Hasker v. Wood* (1885), 54 L. J. Q. B. 419).

It had also been held that the above order did not extend the jurisdiction of the court to give costs under a statute which was silent as to costs, no costs in such a case being given under the old practice in Chancery (*Re Mills' Estate* (1886), 34 Ch. D. 24), but the jurisdiction of the court has since been extended by the Judicature Act, 1890, s. 5. The express provisions of any statute, it will be seen, remain, however, unaffected by it.

The section is as follows :

5. Subject to the Supreme Court of Judicature Acts and the rules of the court made thereunder, and to the express provisions of any statute, whether passed before or after the commencement of this Act, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and to what extent such costs are to be paid.

This section was passed to enable the court to give costs in cases where they could not be given in consequence of the decision in *Re Mills' Estate*, *supra*, that costs could not be given when the Act was silent. The court has now jurisdiction to give costs in these cases, and in cases under other Acts will apparently follow in this respect the decisions under the Lands Clauses Act.

Thus if land were taken by a public body under 57 Geo. 3, c. xxix. (*Michael Angelo Taylor's Act*, *post*), and money paid into court, on a petition to get that money out, there being no provision in that Act as to payment of the costs by the public body, the court had no jurisdiction to order the payment of such costs. The court now has jurisdiction to order the public body taking the land to pay the costs of and incidental to such petition, and will do so (*In re Fisher*, [1894] 1 Ch. 450).

And even in the cases excepted by this section the court can give costs and will do so in a proper case, and there is no appeal from the discretion of a judge in so ordering costs. Thus costs of a petition on payment out were allowed where a person had refused to make title owing to the state of the title being such that for the protection of the promoters the money should have been paid into court (*In re Schmarr*, [1902] 1 Ch. 326).

**"Or an Act incorporated therewith."**—As to incorporation, see notes to ss. 1 and 5.

Since power has been given to the courts to award costs in every case under statutes, subject to the express provisions in the particular statute (Judicature Act, 1890, s. 5, *supra*), the cases as to whether the Lands

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Clauses Consolidation Act is incorporated or not are of much less importance.

In the case of statutes passed after the Lands Clauses Act, 1845, enabling public bodies to take land, that Act will be incorporated whether expressly mentioned or not, and questions of costs not provided for by the special Act will be decided according to the provisions of the Lands Clauses Acts, and this is so whether the Act subsequent to the Lands Clauses Act incorporates part of a previous Act (*Ex parte Vicar of St. Sepulchre's* (1864), 4 De G. J. & S. 232; *In re Wood's Estate* (1886), 31 Ch. D. 607; *Ex parte Eton College* (1850), 20 L. J. Ch. 1; *In re Ellison's Trusts* (1856), 8 De G. M. & G. 62; *Lancashire and Yorkshire Rail. Co. v. Evans* (1851), 15 Beav. 322; and see *Mayor of Huddersfield v. Shaw* (1890), 54 J. P. 724; and as to reading the Lands Clauses Act together with the special Act, see *Sharpe v. Metropolitan District Rail. Co.* (1880), 5 App. Cas. 425).

There has been some difference of opinion as to whether or not the Lands Clauses Act was incorporated in certain subsequent Acts. If not, no costs under s. 80 could, of course, be allowed (*In re Cherry's Estate* (1862), 31 L. J. Ch. 351; *In re Mills' Estate* (1886), 34 Ch. D. 24; *In re Charity Schools of St. Dunstan-in-the-West* (1871), L. R. 12 Eq. 537; and cf. *In re Spitalfields Schools* (1870), L. R. 10 Eq. 671; *In re Wood's Estate* (1886), 31 Ch. D. 607, *per* ESHER, M.R., p. 618). See as to such incorporation s. 1 of this Act and notes thereto.

The special Act while incorporating the Lands Clauses Act may contain express provisions as to costs, in which case, of course, the costs will be governed by such provisions. See *Re St. Katherine's Dock Co.* (1866), 14 W. R. 978.

Where a charitable body is authorised by a private Act to buy certain land, and there is a provision that the money shall be paid into court as provided by the Lands Clauses Act, this does not thereby incorporate the above section, and as the charitable body is not a public undertaking, it will not be ordered to pay the costs of applications in respect of the fund in court (*Re Sion College* (1886), 55 L. T. (N.S.) 589).

**"The wilful refusal."**—This section is construed strictly against the company, and a wilful refusal must be one made merely capriciously and without any reason. If there has been a fair objection, a party is not to be treated as having wilfully refused, because the reason for his refusal happens afterwards to turn out untenable (*In re Windsor, etc. Railway Act* (1850), 12 Beav. 522; and see the same principle, *Ex parte Bradshaw* (1848), 16 Sim. 174).

Thus a landowner will not be deprived of his costs if he refused to accept the purchase money because he believed the award invalid, and there was a substantial question as to its validity (*Ex parte Bradshaw* (1848), 16 Sim. 174), or because on counsel's opinion there was a question as to the right of the promoters to take his land (*Ex parte Dashwood* (1856), 26 L. J. Ch. 299), or because he believed on substantial grounds that the notice to treat had been improperly served (*Ex parte Railston* (1851), 15 Jur. 1028). And even in a case where the petition omitted to state the ground for refusal, the court took judicial notice from its own recollection, of the petitioner having instituted a suit to contest the validity of the award, which suit was not frivolous, although unsuccessful, and allowed his costs (*Ex parte Larson* (1868), 17 W. R. 186). It is not a wilful refusal or neglect to convey that the landowner has not paid off his incumbrancers or procured them to join in the conveyance (*Re Divers* (1855), 1 Jur. (N.S.) 995; *Re Nash* (1855), 1 Jur. (N.S.) 1082).

It, however, amounts to a wilful refusal of the purchase money if the promoters tender the amount ascertained by arbitration, and the landowner refuses it unless his costs are also paid to him at the same time, as there are

other methods provided for obtaining the costs. The landowner was also ordered to pay the costs incurred by the company in calling in the sheriff to give formal and legal possession (*Re Turner's Estate* (1861), 5 L. T. (N.S.) 524), and these have been ordered to be deducted from the purchase money in court (*In re Schmarr*, [1902] 1 Ch. 326).

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**"Wilful neglect . . . to make out a good title."**—Where a landowner fails to deliver a statement of title within the time prescribed by published statutory notices, he will be regarded as having wilfully neglected to make a good title, and will have to bear his own costs of getting the money out of court (*In re Corporation of Dublin, Ex parte Dowling* (1881), 7 L. R. Ir. 173).

If the landowner refuses to make out a good title to the satisfaction of the promoters by refusing to stamp certain deeds of title, the company will, of course, be ordered to pay the costs, if such stamping is considered by the court to be unnecessary (*Ex parte Birkbeck Freehold Land Society* (1883), 24 Ch. D. 119).

As to costs being allowed notwithstanding failure to make a good title, see *In re Schmarr*, [1902] 1 Ch. 326, and notes, *supra*, "In all cases of moneys deposited."

**"To order the costs."**—This does not authorise the court to order the payment of costs out of any particular fund, it merely means that the court may make an order upon the promoters to pay them. Thus, if money is paid in under s. 85, it may be paid out to the promoters upon fulfilling the conditions of the bond, and the court cannot order payment of costs out of it. There is no lien upon it (*In re Neath and Brecon Rail. Co.* (1874), L. R. 9 Ch. 263; *Ex parte Great Northern Rail. Co.* (1848), 5 Rail. Cas. 269). See note to s. 85, *post*.

The matters in respect of which the court may order the costs to be paid by the promoters are according to this section as follows :

- I. The purchase and taking of the lands.
- II. The investment of the moneys in Government or real securities.
- III. The reinvestment in other lands.
- IV. Obtaining the proper orders for the above purposes.
- V. Obtaining orders for payment of dividends.
- VI. Obtaining orders for payment out of the moneys.
- VII. All proceedings relating to the above except such as are occasioned by adverse litigation.

It will be noticed that this section does not enable the court to order promoters to pay the costs in connection with all the applications of the money allowed by s. 69, such as the redemption of the land tax, the discharge of incumbrances, and the erection of substituted buildings. In certain of these cases the court has ordered the costs to be paid by the promoters. See this discussed in note "Reinvestment in other lands," *infra*, p. 187, as being a reinvestment in land.

I. **"The costs of the purchase or taking of the lands."**—The power given to the court to order costs under this heading is limited by the other provisions as to costs in the Act. Thus the costs of assessing the amount of compensation to be paid are regulated, if by justices, by s. 24; if by arbitrators, by s. 34; if by a jury, by s. 51; and in the case of persons abroad, by s. 67. Sections 82 and 83 contain provisions as to the costs of deducing title and of the conveyance. None of these costs can, therefore, be included in an order under s. 80 (*Ex parte Great Northern Rail. Co.* (1848), 5 Rail. Cas. 269).

But where lands were taken under a special Act, which enabled the

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arbitrators to decide as to the costs of arbitration and incorporated ss. 69—80 of the Lands Clauses Act, but not s. 34, the court held that it had jurisdiction, upon an application under s. 80, to order the promoters to pay costs of the arbitration on the arbitrators having omitted to do so (*In re Pardoe's Account*, W. N. (1882) 33).

Nor can the costs of an action to enforce the Act be included in such an order; such costs should be applied for in the action (*Ex parte Great Northern Rail. Co.* (1848), 5 Rail. Cas. 269; *Huynes v. Barton* (1861), 9 W. R. 777).

Costs have been given under this heading in the case of persons under disability when an application to the court has been necessary, as it is the rule of the courts that the estates of such persons are not to be burdened with costs directly or indirectly by reason of their land being taken. Thus promoters taking land belonging to a lunatic will be ordered to pay the costs occasioned by a reference to a master as to the propriety of the sale, and also the costs of a petition by the committee of the lunatic for confirmation of the contract (*In re Taylor* (1849), 1 M. & G. 210), including the costs of the attendance, if required, before the master of the heir at law (*Re Walker* (1851), 7 Rail. Cas. 129), or of the next of kin (*Re Briscoe* (1864), 2 De G. J. & S. 249). As to the attendance of the heir and next of kin on inquiries before the master, see rules 39 and 40 of the Rules in Lunacy, 1892.

In the case of infants, see *In re Manchester and Southport Rail. Co.* (1854), 19 Beav. 365, and cases, *infra*.

Similarly, if the land to be purchased is the subject of an administration suit, the costs of any application in the suit necessary in order to carry out the purchase, must be paid by the promoters.

Thus they have been ordered to pay the costs of an application to obtain the direction of the court as to the course to be taken with reference to the notice to treat (*Huynes v. Barton* (1861), 30 L. J. Ch. 804, 808), and of an application to obtain the subsequent confirmation of the sale (*S. C.* (1866), L. R. 1 Eq. 422). In a suit where women and children were interested, the costs of a reference and of the petition in the cause to ascertain what course was most beneficial for the parties under disability was ordered to be paid by the promoters (*Picard v. Mitchell* (1850), 12 Beav. 486, followed in *Hemiker v. Chafy* (1860), 28 Beav. 126).

As to the parties to be served in these cases, see note "Service and appearance," *post*, p. 189.

*Land taken under s. 85.*—Where land has been taken under s. 85, and the money paid into court, and, as a result of subsequent negotiations, the landowner does not become entitled under the other sections of the Act to the costs he has incurred, the court will allow them under this section on application to get the money out of court.

Thus where a company took land subject to leases, and the purchase money of the whole estate, including that for the leases, was ascertained by arbitration but was not paid into court, inasmuch as the landowner arranged with the various leasees as to the apportionment, the court ordered the company to pay his costs of obtaining such apportionment on an application for payment out of the sum deposited under s. 85 (*Ex parte Flower* (1866), L. R. 1 Ch. 599).

So where the land had been taken and a jury summoned to assess the amount, but the parties then came to an agreement as to the compensation, the vendor's costs occasioned by the abortive summoning of the jury were ordered to be paid by the promoters on a petition being presented to the court by the vendor praying for such an order (*Ex parte Morris* (1871), L. R. 12 Eq. 418).

In a case where a company had entered under s. 85, but were afterwards under a new Act allowed to abandon, subject to the landowner's rights to

compensation for damage done by entry and occupation, to be determined according to the Lands Clauses Act, the company were ordered to pay the costs of ascertaining the amount of such compensation and of the preparation of an agreement with the landowner in respect thereof, the court being of opinion that this was a taking within the meaning of this section and of s. 85 (*Charlton v. Rolleston* (1884), 28 Ch. D. 237).

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**II. Costs of investment in Government or real securities.**—This refers to the interim investment provided for in s. 70 pending the application of the money according to s. 69. As money in court under s. 70 is cash under the control of the court, and may be invested as such, the costs of investment in securities other than those mentioned in the section, will be allowed, together with the increased brokerage thereby occasioned (*Ex parte St. John Baptist College, Oxford* (1882), 22 Ch. D. 93; *Re Brown* (1890), 63 L. T. (N.S.) 131; *Re Hanbury's Trusts*, W. N. (1883) 116; *In re Gaselee*, [1901] 1 Ch. 923).

Costs of interim investment will be allowed, although with certain consents the money could have been paid directly to the persons entitled instead of into court (*In re Leeds Grammar School*, [1901] 1 Ch. 228).

There was some doubt as to whether an investment on mortgage was an interim or final investment, and the order allowing the same was commonly made on condition that it was to be treated as a permanent investment, and the company was not to be liable for the costs of a future investment. It may now be taken that such an investment is to be treated as an interim and not as a final investment, and no such condition will be required (*In re Blyth's Trusts* (1873), L. R. 16 Eq. 468; *In re Sewart's Estate* (1874), L. R. 18 Eq. 278; *In re W. Smith's Estate* (1870), L. R. 9 Eq. 178; *Reading v. Hamilton* (1862), 5 L. T. (N.S.) 628; to the contrary, see *In re Lomax* (1864), 34 Beav. 294; *Re Wilkinson* (1868), 37 L. J. Ch. 384; *In re Flemon's Trust* (1870), L. R. 10 Eq. 612).

Where such a condition has been inserted the company will not be liable for the costs of any future application in respect of the purchase money (*In re Gedling Rectory* (1885), 53 L. T. 244).

Although a contract for the purchase of land as a permanent investment may have been entered into, the costs of an interim investment until the purchase is completed must be paid by the promoters (*In re Liverpool, etc. Rail. Co.* (1853), 17 Beav. 392).

Under this head are included the broker's commission on the purchase of stock which must be paid by the promoters (*Ex parte Trinity House* (1843), 3 Hare, 95; *Ex parte Braithwaite* (1853), 1 S. & G. App. xv.). In such a case the whole of the money ought to be invested without deducting the broker's charges, and the Paymaster-General should be recouped (*Ex parte Braithwaite* (1853), 1 S. & G. App. xv.; but see *Ex parte Harborough* (1853), 17 Jur. 1045). According to the order usually drawn up, the applicant pays the brokerage and other charges in the first instance, and recovers them from the promoters as part of his costs (*In re Gaselee*, [1901] 1 Ch. 923, where the form of order is discussed; and see also on payment out, *In re Magdalen College, Oxford*, [1901] 2 Ch. 786).

In these cases the official broker must be employed (*In re West Riding and Lancashire Railways Bill*, W. N. (1876) 80).

**Interim reinvestment.**—If an application be made for a reinvestment of the fund other than permanently, the costs of such interim reinvestment will be payable by the promoters, if the change of investment is not capricious.

Thus where the committee of a lunatic refused to accept the conversion of the lunatic's consols which represented a fund in court under this Act, as not being beneficial to the lunatic's estate, and the Crown paid the money into court, the court ordered the promoters to pay the costs of the reinvestment in preference shares of a railway company, except so far as

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the costs of investment might have been increased by reason of the redemption money exceeding the amount of the original purchase money (*Re Brown* (1890), 63 L. T. (N.S.) 131, following as to costs the form of order in *Attorney-General v. Mayor of Rochester* (1867), 16 L. T. (N.S.) 408).

Where the fund has been invested in consols, the court has ordered the promoters to pay the costs of an investment on mortgage security, without prejudice to the applicant's claim for costs of a subsequent permanent investment in land (*In re Blyth's Trusts* (1873), L. R. 16 Eq. 468, a decision of Lord SELBORNE; and see *In re Seicart's Estate* (1874), L. R. 18 Eq. 278). In an Irish case the costs were refused of the final application, which was to use the money to pay off incumbrances, not on the ground of want of jurisdiction in respect of incumbrances, but because previous orders for interim investment and payment of dividends had been made (*In re Dublin, etc. Rail. Co., Ex parte Richards* (1890), 25 L. R. Ir. 175).

**III. Costs of reinvestment in other lands.**

*Persons absolutely entitled.*—Where the fund is in court, and belongs to several persons who have become absolutely entitled among them to the whole of it, the court will, nevertheless, order the promoters to pay the costs of a reinvestment of the fund in land on the petition of all parties (*Re Jones' Trust Estate* (1870), 39 L. J. Ch. 190; *Re Parker's Estate* (1872), L. R. 13 Eq. 495; *Re Dodd's Estate* (1871), 19 W. R. 741).

Where land was taken which was subject to certain uses, and the money paid into court, but by a will made before the land was taken, but which did not operate until after, the uses were changed, it was held that the promoters must pay the costs of investment of the land to the new uses, although had there been no will the estate would have vested absolutely in the heir (*In re de Beauvoir's Trusts* (1860), 29 L. J. Ch. 567). In that case TURNER, L.J., expressed the opinion that an owner in fee could claim to have a reinvestment (p. 570).

Before the court will allow the money to be invested in land it must be satisfied (1) that it is a fit and proper purchase, and (2) that a good title can be made to it. A provisional contract is usually entered into, and evidence of the fitness of the purchase is produced at the time of application. If the evidence is satisfactory an order for an inquiry into the title will be made, and that, if satisfactory, a conveyance to be settled by the judge may be executed, and the money paid. If the evidence as to the fitness is not sufficient the court may order an inquiry as to the fitness, and if shown to be fit a further inquiry as to title. See Daniel's Chancery Practice, 5th ed., p. 846; Seton on Decrees, 6th ed., pp. 2429 *et seq.*

As to the duties of a solicitor on the purchase of land under the direction of the court, see a report of the taxing master in *In re Merchant Taylors' Co.* (1885), 30 Ch. D. 28; on the procedure at the inquiry, *Anon.* (1854), 18 Jur. 742.

If trustees of a settlement purchase lands, pay the money and have the conveyances executed, before applying to have the purchase approved as a fit and proper one, they will not be allowed the costs of the purchase, although it may be sanctioned (*Ex parte Bourerie* (1848), 5 Rail. Cas. 431; *Ex parte Horfield Trust* (1881), 29 W. R. 462).

If the money is transferred or paid to the petitioner for the purpose of investment in land, the costs of investment are not payable by the promoters (*Ex parte Horfield Trust* (1881), 29 W. R. 462).

If the fund is very small the investigation of the title in whole or in part may be dispensed with (*In re Blomefield's Estate*, W. N. (1876) 242; 25 W. R. 57), and also the reference to the conveyancing counsel (*In re Lapworth Charity*, W. N. (1879) 37).

The promoters are required to pay all the costs of the application, the

inquiry, and the conveyance, if the purchase is carried out, but generally they will only be required to pay such costs as are ordinarily payable on an open contract by the purchaser. They will not, therefore, be required to pay the vendor's costs even though the purchaser agree to pay them (*In re Temple Church Lands* (1877), 47 L. J. Ch. 160; *Ex parte Christ's Hospital* (1875), L. R. 20 Eq. 605).

If the purchaser employ his own counsel as well as the conveyancing counsel of the court, he will be allowed costs of consultations between the two counsel on difficult points, but not those of his private counsel for advising on the whole title (*Re Jones's Settled Estates* (1858), 6 W. R. 762).

So also if by reason of changes in the surroundings, funds in court in respect of charity lands require to be administered according to a new scheme, the promoters will not be ordered to pay the costs of a new scheme or of the costs incurred by the petition being entitled in Sir S. Romilly's Act (*In re St. Paul's School, Finsbury* (1883), 52 L. J. Ch. 454).

When by reason of the owners of the land taken being trustees of a charity, the conveyance of the land purchased requires to be registered under the Mortmain Acts, the promoters will be required to pay the costs of the enrolment (*Re Governors of Christ's Hospital* (1864), 12 W. R. 669).

If the lands belong to a vicarage, and the attendance of the bishop as well as the vicar is required at the inquiry he will be entitled to his costs of attendance from the promoters (*Ex parte Vicar of Creech St. Michael* (1852), 21 L. J. Ch. 677).

If copyhold lands are purchased the promoters will only be required to pay the fees of admission, but not the fines on admission which are payable out of the fund in court as part of the purchase money (*Ex parte Vicar of Sawston* (1858), 6 W. R. 492; *Re Cann's Estate* (1850), 15 Jur. 3).

Enfranchising copyhold land is equivalent to purchasing freehold, and an inquiry will be ordered as to whether a valid enfranchisement can be made, the costs being payable by the company (*In re Cheshunt College* (1855), 1 Jur. (N.S.) 995; *Dixon v. Jackson* (1856), 25 L. J. Ch. 588).

If the land to be purchased is the subject of a suit, and a petition in the suit is necessary to enable a conveyance to be made, the promoters will be ordered to pay the costs of that petition (*Carpmael v. Profit* (1853), 17 Jur. 875), and the same holds good if after the agreement to purchase the vendor dies intestate, leaving an infant heir, and a second petition is thus rendered necessary, but in such a case they will not have to pay the costs of an action by the purchasers to enforce the contract against the infant heir, these being costs occasioned by adverse litigation (*Armitage v. Askham* (1855), 1 Jur. (N.S.) 227). Similarly, if the fund in court is in the hands of trustees, and there is a suit in respect thereof, the trustees must serve the parties thereto, and such additional expenses are payable by the promoters (*Re Brandon's Estate* (1862), 2 Dr. & S. 162).

*When purchase not completed.*—If the court does not approve the purchase the promoters will not be ordered to pay the costs, and their costs in such a case have been ordered to be paid out of the fund in court (*In re Hardy's Estate* (1854), 18 Jur. 370; and see *Ex parte Rector of Holywell* (1865), 2 Dr. & S. 463; *Ex parte Stevens* (1848), 13 Jur. 2).

If the court approve the purchase but it is not completed owing to the vendor being unable to make a good title, the promoters will be ordered to pay the costs (*Ex parte Rector of Holywell* (1865), 2 Dr. & S. 463; *In re Woolley's Estate* (1853), 17 Jur. 850; *Re Carney* (1872), 20 W. R. 407), and also if the proposed purchaser abandon the attempt on reasonable grounds such as the great expense entailed in making a good title (*In re Vandrey's Trusts* (1861), 3 Giff. 224), but they will not be so ordered if it is abandoned on insufficient grounds (*Ex parte Copley* (1858), 4 Jur. (N.S.) 297).

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*Fund reinvested in portions.*—The fund in court need not be invested in one purchase of land. It may be invested in several purchases and at different times, and in small sums, provided such investments are not capricious, but are *bonâ fide*, and for the benefit of the estate, in which case the promoters will be ordered to pay the costs of each application and purchase; otherwise, according to the proviso in the section, the costs of only one application shall be allowed (*Re Brandon's Estate* (1862), 2 Dr. & S. 162; *In re Woolley's Estate* (1853), 17 Jur. 850; *Re Trustees of St. Bartholomew's Hospital* (1859), 4 Dr. 425). WOOD, V.-C., in *Ex parte The Fishmongers' Co* (1862), 1 N. R. 85, said that the authorities established the rule that a case of vexatious and unnecessary expense must be made out against the petitioners to disentitle them to their costs (*cf. Jones v. Levis* (1850), 2 Mac. & G. 163; *Ex parte Eton College* (1842), 3 Rail. Cas. 271; *Ex parte Waste Land of Bozmoor* (1844), 3 Rail. Cas. 513; *Re St. Katherine's Dock Co.* (1844), 3 Rail. Cas. 514; *Ex parte Bouverie* (1846), 4 Rail. Cas. 229; *Re Merchant Taylor's Co.* (1847), 10 Beav. 485; *Ex parte Hospital of St. Katherine* (1881), 17 Ch. D. 378, all under special Acts). In the last case six different purchases were allowed, the fund being considerable.

*Solicitor's remuneration.*—When money in court is to be laid out in the purchase of land, the solicitor of the party whose land was taken is entitled to charge the scale fee under the Solicitors' Remuneration Act, 1881, "for investigating title and preparing and completing conveyance." The exception in r. 11 to Sched. I., Part I., of the General Order under that Act that the scale does not apply "in cases of sales under the Lands Clauses Consolidation Act, or any other private or public Act under which the vendor's charges are paid by the purchaser," does not include a purchase under the Act, and it was held that the solicitor was entitled to have the scale fee, although the purchase was made under the direction of the court, as he would have to do all the things required in a purchase not in court, although he did not incur the same responsibility (*In re Merchant Taylor's Co.* (1885), 30 Ch. D. 28; and see *In re Stewart* (1889), 41 Ch. D. 494).

*Fund invested with other money.*—If the petitioner invest other money with the fund in court the company pay all the costs except such as are incurred by reason of the purchase money exceeding the amount of the fund; such extra costs are payable by the petitioner (*Ex parte Hodge* (1848), 16 Sim. 159; *Ex parte King's College, Cambridge* (1852), 5 De G. & S. 621; *Re Branmer's Estate* (1849), 14 Jur. 236; *In re Loveband's Settled Estate* (1860), 30 L. J. Ch. 94; *Attorney-General v. Mayor of Rochester* (1867), 15 W. R. 765; see forms in Seton, 6th ed., p. 2432).

In one case where the fund in court was proposed to be invested with another fund in court arising from the granting of leases, and two purchases of land had been previously entered into, the costs ordered to be paid by the promoters were—(1) half the costs of the petition, except that those costs were not to exceed the costs of a summons adjourned to the judge in chambers, the amount paid in by them being under £1,000; (2) a rateable proportion of the stamp on one conveyance, and (3) one-fourth of the other costs of reinvestment under both contracts, the fund representing the land taken being about one-ninth of the whole sum to be invested (*Ex parte Curate of Bilston* (1889), 37 W. R. 460).

Where, in a suit in one branch of the court, it was sought to lay out a considerable sum in the purchase of land, and an application was made in another branch that the money in court for the purchase of land by a railway company should be applied to make up the sum required, the company were only ordered to pay the costs of the application and not of the conveyance (*Re Bago's Settled Estates* (1866), 14 W. R. 471).

Where two or more funds in court paid in by different bodies under the

Lands Clauses Act are invested together, see note, *infra*, "Apportionment of costs among several bodies," *post*, p. 198.

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*Costs of redeeming land tax.*—The practice of the court has been to order the promoters to pay these costs, the court construing the redemption to be a reinvestment in other lands. JESSEL, M.R., seems to have entertained some doubt as to this, but decided against the company, as being bound by a series of authorities (*In re Bethlehem Hospital* (1875), L. R. 19 Eq. 457, following *Ex parte Northwich* (1834), 1 Y. & C. Ex. 166; *Ex parte Trafford* (1837), 2 Y. & C. Ex. 522, on similar provisions in special Acts; *Re London, Brighton and South Coast Rail. Co.* (1854), 18 Beav. 608, 611; and *Ex parte Beddoes* (1854), 2 Sim. & Giff. 466, on the Lands Clauses Acts).

If there is any doubt about this point, the court will now, under s. 5 of the Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), probably consider they have jurisdiction to give costs. See *supra*, note, "In all cases of moneys deposited," p. 179.

*Costs of discharging incumbrances.*—These costs were not allowed by the courts under this section, there being a current of authorities against them, but the costs of the petition to obtain the sanction of the court and of the consequent order were allowed (*In re Mark's Trusts*, W. N. (1873) 62; *cf. Dublin, etc. Rail. Co., Ex parte Richards* (1890), 25 L. R. Ir. 175). The principal authorities are, under the Lands Clauses Act: *Ex parte Corporation of Sheffield* (1855), 21 Beav. 162; *Ex parte Sheffield Town Trustees* (1860), 8 W. R. 602; and under similar provisions in other Acts: *Ex parte Hardwicke* (1848), 17 L. J. Ch. 422; *In re Yeates* (1848), 12 Jur. 279; *In re Stanley of Alderley's Estate* (1872), L. R. 14 Eq. 227.

These costs may, possibly, be allowed now under s. 5 of the Judicature Act, 1894, as judges have expressed their regret at being unable to allow them, and this Act probably gives them jurisdiction. See note, *supra*, p. 179.

*Purchasing lease by reversioner.*—The purchase of an outstanding lease by the reversioner, under the Episcopal and Capitular Estates Act, 1851 (14 & 15 Vict. c. 104), was regarded as an investment in land and not the discharge of an incumbrance, and the promoters were ordered to pay the costs of the purchase (*Ex parte Bishop of London* (1860), 2 De G. F. & J. 14; *Ex parte Dean of Manchester* (1873), 28 L. T. (N.S.) 184). The principle would appear to be the same as regards other leases, but *cf. Ex parte Corporation of Sheffield* (1855), 21 Beav. 162, and *Ex parte Corporation of London* (1868), L. R. 5 Eq. 418. The promoters will be ordered to pay the costs of the petition (S. C.).

*Costs of investment in buildings.*—The court will sanction the laying out of the money in permanent buildings on the ground that this is an investment in land. See s. 69, note, p. 139.

The fees payable to the architect and surveyor for planning and superintending the buildings are not payable by the promoters, as they are expenses of building (*Re The Butchers' Company* (1885), 53 L. T. (N.S.) 491).

The money in such cases is usually paid out to be applied in building, or it is paid out on a surveyor's certificate that the buildings are complete. In such cases the costs of the petition are ordered to be paid by the promoters, as it is either a payment out of court, or a reinvestment in land under s. 10 (*Re Incumbent of Whitfield* (1861), 1 John. & H. 610, which has been followed in *Re Lathropp's Charity* (1866), L. R. 1 Eq. 467; *Ex parte Rector of Claypole* (1873), L. R. 16 Eq. 574; *Ex parte Rector of Shipton* (1871), 19 W. R. 549; *Ex parte Rector of Gamston* (1876), 1 Ch. D. 477). Two earlier cases to the contrary, *Ex parte Milward* (1859), 27 Beav. 571, and

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These costs will include the costs of an affidavit as to the advantage to be gained by the buildings, but will not include those of the surveyor's certificate that the works have been completed (*Ex parte Rector of Shipton* (1871), 19 W. R. 549), but will include the costs of a certificate of the amount due (*Re Arden* (1894), 70 L. T. 506).

In that last case the architect's fees and the charges incurred in relation to the contract were ordered to be paid out of the fund; the promoters appealed, as they feared that under the usual order these fees would be payable by them, a fear which LINDLEY, L.J., considered not to be well founded (p. 508).

*Of erecting buildings in substitution.*—The erection of buildings in substitution for those injured by the execution of the works is an application of the money specially provided for by s. 69, and as s. 80 provides that the promoters shall pay the costs which have been incurred in consequence of the taking of the lands, the costs of the petition for sanctioning the erecting or removing of buildings injured by the proximity of the works are payable by the promoters, but not the costs of the removing, replacing, or rebuilding (*Ex parte Dean of Canterbury* (1862), 10 W. R. 505; *Ex parte Thorner's Charity* (1848), 12 L. T. (o.s.) 266; *Ex parte St. John's, Fulham* (1856), 28 L. T. (o.s.) 173).

Where a hospital had been taken and the application was to pay money to the trustees to be laid out in providing temporary accommodation for the patients, the company were ordered to pay the costs of the petition (*In re St. Thomas's Hospital* (1863), 11 W. R. 1018).

**IV. Costs of obtaining the proper orders.**—The costs of obtaining the orders for redeeming land tax, discharging incumbrances, and investment in buildings, are all payable by the promoters. See note immediately preceding.

It is a general rule of the court that the promoters will only be called upon to pay the costs necessarily incurred; if, therefore, persons are served or, being served, appear unnecessarily, their costs will not be payable by the promoters. See cases, *infra*, note, "Service and appearance."

Similarly, if the proper procedure is by summons, the extra costs of a petition will not be allowed (*In re Joliffe's Estate* (1870), L. R. 9 Eq. 668; *Re Bethlehem Hospital* (1885), 30 Ch. D. 541; *Bates v. Moore* (1888), 38 Ch. D. 381; *Attorney-General v. St. John's Hospital*, [1893] 3 Ch. 151, p. 168). And see cases in notes to s. 70. But they will be allowed if by reason of the matter being complicated a petition is necessary (*In re Jackson*, W. N. (1894) 50; *Re St. Alban's, Wood Street* (1891), 66 L. T. (n.s.) 51). Or if a supplementary petition is necessary (*In re Sanders* (1894), 70 L. T. 755).

If only one application is necessary, the costs of more than one will be disallowed. Thus, if moneys belonging to the same trust are paid into court by different companies, and are dealt with by orders in different branches of the court, and it is sought to obtain investment or payment out, only one application should be made (*Ex parte Lord Broke* (1863), 11 W. R. 505; *In re Pattison's Estates* (1876), 4 Ch. D. 207; *In re Gore-Langton's Estates* (1875), L. R. 10 Ch. 328; *In re Midland Great Western Rail. Co.* (1881), 9 L. R. Ir. 16). And see s. 70, note, p. 158.

Where there are several persons entitled to a fund in court, each person is entitled to make a separate application in respect of his share, and he is not bound to employ the same solicitor as the other applicants; but if the parties do employ the same solicitor he ought not to incur additional costs by making two or more applications where one would be sufficient, and if he

does so, he will not be allowed more than one set of costs (*In re Nicholls' Trust Estates* (1866), 35 L. J. Ch. 516; *In re Long's Trusts* (1864), 33 L. J. Ch. 620; *Ex parte Baroness Braye* (1863), 11 W. R. 333; *In re Spooner's Estate* (1854), 1 K. & J. 220).

*Form of order as to costs.*—Forms of orders for payment and taxation of costs under this section will be found in Seton on Decrees, 6th ed., p. 2456. The orders must follow the words of the section. Thus where a lease is taken, and under the order it is necessary to sell part of the corpus every six months, no special form of order is required to enable the master to tax the costs of these half-yearly sales (*In re Edmund's* (1866), 35 L. J. Ch. 538).

It is not usual to insert the exception as to costs of adverse litigation unless some such litigation is supposed to have taken place, see Seton, p. 2457, but *cf. Re Cant* (1859), 1 De G. F. & J. 153; *Re Courts of Justice Commissioners*, W. N. (1868) 124.

In simple cases where the costs of the adverse litigation can be distinguished, the order may specify the particular costs which the promoters are not required to pay (*In re Longworth's Estate* (1853), Kay & J. 1).

As to what may be included under the usual order, see *Re Arden* (1894), 70 L. T. 506.

**Service and appearance.**—It is provided by O. 65, r. 27 (19) and (23), of the Rules of the Supreme Court, as follows :

(19) Where any petition in a cause or matter assigned to the Chancery Division is served, and notice is given to the party served that in case of his appearance in court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be £1 10s. The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the court or judge shall consider the party entitled, notwithstanding such notice or tender, to appear in court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition, without appearing thereon, he is to be allowed a fee not exceeding the amount aforesaid.

(23) Where any party appears upon any application or proceeding in court or at chambers, in which he is not interested, or upon which, according to the practice of the court, he ought not to attend, he is not to be allowed any costs of such appearance unless the court or judge shall expressly direct such costs to be allowed.

Notwithstanding the second of these rules, it seems to be the practice that where a petitioner does not, on serving the petition upon a respondent who has no interest in the matter, tender him a sum sufficient to consult a solicitor as to the petition, the petitioner must pay the costs of the respondent's appearing (*Wood v. Boucher* (1870), L. R. 6 Ch. 77; *Clark v. Simpson* (1868), L. R. 6 Eq. 336; and see *Crawshay v. Thornton* (1837), 2 My. & Cr. 1; *In re Burnett's Estate* (1864), 10 Jur. (N.S.) 289; *Somes v. Martin*, W. N. (1882) 113).

If a sum is tendered as prescribed in r. 19, the court will consider whether the person served should have appeared or not, and if he ought not to have appeared, he will not receive his costs of appearance. If his appearance is

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justified, he will have his costs (*In re Duggan's Trusts* (1869), L. R. 8 Eq. 697).

The promoters of the undertaking will only be required to pay such costs of service and of appearance as are properly incurred, so that petitioners should protect themselves by tendering 30s. under the above rule. If the party wrongfully appear, he will not receive his costs of appearance, while, if he was properly served, the promoters will be ordered to pay the costs of service and the amount tendered. If, on the other hand, his appearance was justified, the promoters will be ordered to pay all his costs (*In re Gore-Langton's Estate* (1875), L. R. 10 Ch. 328, 333; *In re Duggan's Trusts* (1869), L. R. 8 Eq. 697).

As an affidavit of service may be necessary, the costs thereof will be allowed against the promoters (*In re Halstead United Charities* (1875), L. R. 20 Eq. 48; *In re Artizans Dwellings Act, Ex parte Jones* (1880), 14 Ch. D. 624; *Re Ruck's Trusts* (1895), 13 R. 637).

If, by oversight or for any other reason, a fund in court has not been dealt with for over fifteen years, and amounts to £500, no application can be made in respect thereof, without serving the official solicitor with the petition or summons. Chancery Funds Amended Orders, 1874, r. 14, and Supreme Court Funds Rules, 1894. In such a case, as the fault lies with the person entitled, the promoters are not required to pay the costs occasioned by such service (*In re J. Clarke's Estate* (1882), 21 Ch D. 776).

It is proposed to set out the decisions as to service and appearance on applications for the various orders under this section.

Generally it will be seen that all persons who have an interest in the fund which may be affected ought to be served, but that they ought not to appear merely to consent or if their rights are not in fact affected, and where several are served, those with similar interests should as far as possible appear by the same counsel, in cases where their appearance is necessary.

(1) *Service on applications as to purchase of lands.*—Where applications are necessary because a suit is pending (see note, *supra*, p. 185), the parties to the suit must be served, and the costs of their appearance, as well as of the service, are payable by the company (*Haynes v. Barton* (1866), L. R. 1 Eq. 422; 1 Dr. & Sm. 483; *Picard v. Mitchell* (1850), 12 Beav. 486; *cf. cases* under note "Service where money is to be laid out in the purchase of land," *infra*, p. 191).

On a sale of a lunatic's estate the costs of the attendance of the heir, and next of kin at the inquiry before the master, if required, will be allowed (*Re Walker* (1851), 7 Rail. Cas. 129; *Re Briscoe* (1864), 2 De G. J. & S. 249).

(2) *Service on applications for interim investment.*—Neither the trustee or remainderman should be served in such cases if the investment is an ordinary one. If the security is an unusual one, the remainderman should be served, but in such a case the company will not have to pay the costs of the service, or of his appearance (*In re Dowling's Trusts* (1876), 45 L. J. Ch. 568; and see *In re Leigh's Estate* (1871), L. R. 6 Ch. 887).

Where land was taken which was held by a lessee for a lease of ninety-nine years, if he should so long live, on an application for *interim* investment, costs were allowed to the trustees and lessee, the trustees being in fact the tenants of the immediate freeholds, but no costs were allowed to the remainderman (*Re Finch's Estate* (1866), 14 W. R. 472).

If the tenant for life is in possession, mortgagees and other incumbrancers should not be served, if the application is merely for *interim* investment and payment of dividends, and the company will not be ordered to pay the costs of such service (*Re Morris's Estates* (1875), L. R. 20 Eq. 470; *Re Webster's Estates* (1854), 2 Sm. & G. App. vi.; *In re Lancashire and Yorkshire Rail. Co., Ex parte Smith* (1849), 6 Rail. Cas. 150; *Re Thomas' Trusts* (1864).

12 W. R. 546. And see *In re Hungerford's Trusts* (1857), 3 K. & J. 455). *Re Brooke* (1861), 10 W. R. 35, may be considered overruled, and see *In re Smith* (1865), 14 W. R. 218. Neither need an annuitant be served (*Ex parte Cofield* (1847), 11 Jur. 1071).

Mortgagees in possession should be served (*Re Hungerford's Trusts* (1857), 3 K. & J. 455), and the service and appearance, if necessary, will be payable by the promoters (*In re Nash* (1855), 25 L. J. Ch. 20). Tender under r. 19, *supra*, should be made, for, if their interest is not affected, their costs of appearance will not be allowed (*In re Ruck's Trusts* (1895), 13 B. 637).

Under the old practice, when the land taken was vested in trustees, the costs of their appearance have been allowed (*In re Duke of Cleveland's Harle Estate* (1861), 9 W. R. 883; but *cf. Re Finch's Estate* (1866), 14 W. R. 472). Probably, now they should be served, and 30s. tendered under r. 19, as the costs of their appearance will not be allowed if their interest is not affected.

Where the consent of Church Estates Commissioners was required to an investment, it was held that the consent should have been obtained in writing and that service upon them was unnecessary (*Ex parte Bishop of London* (1860), 2 De G. F. & J. 14). So, on an application for payment of dividends to a wife, the husband should join in the petition, and should not be served. No costs of service or appearance will be allowed to him (*In re Osborne's Estate*, W. N. (1878) 179).

In such applications the company is usually made a respondent and served in the usual way; the company may be made a co-petitioner, but this is not the best course (*In re King Edward VI's Almshouses, Saffron Walden* (1868), 37 L. J. Ch. 664).

In some cases it has been held that the company need not be served (*Ex parte Hordern* (1848), 2 De G. & S. 263; *Ex parte Rector of Kirkby Overblow* (1850), 19 L. J. Ch. 329), but query as to the effect of an order against them for costs.

When the company is served, one tender is sufficient, and it is not necessary to make tenders to the secretary or to the solicitor. See *In re Michell* (1881), 17 Ch. D. 515, p. 517.

As to service on promoters, see s. 134, *post*.

(3) *Service where money is to be laid out in the purchase of land.*—When the money is to be reinvested in the purchase of land, the vendor of that land should not be served. If he is served, he will be entitled to his costs from the petitioner, but not from the promoters (*In re Dylar's Estate* (1855), 1 Jur. (N.S.) 975).

If by reason of the lands being settled under a private Act, the trustees and remainderman required to be served on an application by the tenant for life, the promoters will not be called upon to pay these costs (*Re Bowes* (1864), 10 Jur. (N.S.) 817).

Where the land taken is in possession of a tenant for life, and the money is to be laid out in other land, the remainderman need not be served, nor apparently the trustees of the settlement, provided the investment is an ordinary one (*Re Browne and Oxford and Buckinghamshire Railway Acts* (1852), 6 Rail. Cas. 733; *S. C. sub nom., Ex parte Staples* (1852), 1 De G. M. & G. 294). And see *In re Gore-Langton's Estate* (1875), L. R. 10 Ch. in judgment of MALINS, V.-C., p. 331, note. If money paid for freehold land is to be invested in copyhold land, it would appear doubtful whether the remainderman ought to be served or not (*Re Browne, supra*, and *In re Cunn's Estate* (1850), 19 L. J. Ch. 376).

If the money is paid into court in respect of land which is the subject of an administration action, the parties to the suit ought to be served, but they ought not to appear and the promoters will not be ordered to pay their costs

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of appearance. They may, however, be payable out of the fund (*Wilson v. Foster* (1859), 28 L. J. Ch. 410). In some cases costs of appearance have been allowed (*Haynes v. Barton* (1861), 30 L. J. Ch. 804; *Brandon v. Brandon* (1862), 32 L. J. Ch. 20; *In re Brandon's Estate* (1862), 2 Dr. & S. 162).

They will probably be allowed only when appearance is necessary.

As regards incumbrances the rule as to service and appearance was laid down by the Court of Appeal in *In re Gore-Langton's Estate* (1875), L. R. 10 Ch. 328: "That wherever there is a petition simply for the reinvestment of money in land, and there are mortgagees or annuitants whose rights are not otherwise affected by the petition, the proper course will be to serve such mortgagees or annuitants with a copy of the petition, and to pay them 40s. (now 30s.) for costs, giving them at the same time an intimation that, if they appear upon the hearing, they will probably have to pay their own costs."

This rule will probably apply to incumbrances created since the payment into court (*Re Olive's Estate* (1890), 44 Ch. D. 316, and note, *infra*, "Costs due to subsequent dealing with property," p. 196).

(4) *To discharge incumbrances and for improvements.*—In cases where the money is to be laid out in improvements or in discharging incumbrances, the remaindermen should be served, and costs of their appearance may be allowed against the promoters. Thus, if it is proposed to apply the fund to improvements under the Settled Land Act, the trustees and remaindermen should be served and have an opportunity of objecting (*In re Leigh's Estate* (1871), L. R. 6 Ch. 887). So also should the patrons of a living (*Ex parte Vicar of Castle Bytham*, [1895] 1 Ch. 348). The costs of the appearance of the remaindermen were allowed in an application for applying to discharge an incumbrance, although it does not appear that they objected to the discharge (*Re Furness Rail. Co.*, *Re Romney* (1863), 3 N.R. 287). In Ireland, it has been held, that in applications for the discharge of incumbrances the remaindermen need not be served (*Ex parte Lord Leconfield* (1874), I. R. 8 Eq. 559; *Ex parte Studdert* (1856), 6 Ir. Ch. R. 53; but cf. *Ex parte Vicar of Castle Bytham*, *supra*).

Where the money is to be paid out for the purpose of being laid out in buildings, promoters will not be ordered to pay the costs of serving, or of appearance of other parties who are advancing money towards the building, such as the Governors of Queen Anne's Bounty. Their costs will be payable by the petitioner (*Re Incumbent of Whitfield* (1861), 1 J. & H. 610).

(5) *Service upon applications for payment out.*—On these applications the parties interested in the fund should be served, but they ought not to appear unless their interest is affected.

Thus incumbrancers should be served, and 30s. tendered to them under rule 19, *supra*, p. 189; but costs of their appearance will not be allowed if they appear merely to concur (*In re Halstead United Charities* (1875), L. R. 20 Eq. 48, following the rule laid down in *In re Gore-Langton's Estate* (1875), L. R. 10 Ch. 328, *supra*), or if it is to be paid out to them in discharge of their debt (*In re Artizans Dwellings Act*, *Ex parte Jones* (1880), 14 Ch. D. 624; *In re Ruck's Estate* (1895), 13 R. 637). The same principle applies in the case of an incumbrance made subsequently to payment (*In re Olive's Estate* (1890), 44 Ch. D. 316; and see, *infra*, note, "Costs due to subsequent dealing with property," p. 196). In one case, where part of the property taken was subject, together with other property affording by itself ample security, to two small rentcharges, it was held that service on the persons entitled thereto was unnecessary (*Ex parte Mercer's Company* (1879), 10 Ch. D. 481).

The earlier decisions as to serving incumbrancers were somewhat conflicting. See *Re Hatfield's Estate* (1863), 32 Beav. 252; *Re Brooke* (1864), 12 W. R. 1128; *Re Estates of Baroness Bray* (1863), 32 L. J. Ch. 432.

Where a sole trustee applied to have the money paid out to him for division among the *cestui que trust*, and the *cestui que trust* joined in the petition and appeared by counsel representing different classes of interests, such appearance was considered necessary in order to enable the court to distribute the fund, and all costs of appearance not wantonly incurred were ordered to be paid by the promoters (*In re Long* (1864), 10 Jur. (N.S.) 417; and see *Ex parte Baroness Braye* (1863), 11 W. R. 333).

Where the fund was in the name of trustees to whom the dividends had been paid, they were held entitled to appear, and to their costs of appearance when the persons becoming absolutely entitled applied for payment out (*Re Burnell's Estate* (1864), 12 W. R. 568; *Ex parte Metropolitan Rail. Co.* (1868), 16 W. R. 996). But if they merely appear to concur, the costs of their appearance under the present practice would probably not be allowed.

When trustees apply for payment out as persons entitled to sell, the *cestui que trust* apparently need not be served (*Re East* (1853), 2 W. R. 111; *In re Gooch's Estate* (1876), 3 Ch. D. 742; *In re Hobson's Trusts* (1878), 7 Ch. D. 708; cf. *In re Smith* (1888), 40 Ch. D. 386).

A person entitled to a share of a fund in court may apply for the same to be paid out to him without serving the other parties interested, provided at least that there is no question as to the manner in which the share is to be distributed (*Re Midland Rail. Co.* (1847), 11 Jur. 1095; *Re Clarke's Devises* (1858), 6 W. R. 812).

If the parties employ the same solicitor they ought to join in the same petition, unless their interests are hostile (*In re Nicholl's Trust Estates* (1866), 35 L. J. Ch. 516).

Parties whose names are included in the title to an account should be served, but if they have ceased to have any interest they ought not to appear (*In re Justices of Coventry* (1854), 19 Beav. 158).

Where deposits made under s. 85 had been overlooked and the purchase money had been paid, the money was ordered to be paid out, without service on the landowners (*Ex parte Midland Rail. Co.*, W. N. (1894) 38).

(6) *Service on application to transfer fund.*—(a) *Transfer to official trustees of charitable funds.*—When funds have been paid into court in respect of various charity lands, and a scheme is made pursuant to statute, and thereby the various corporations and persons in whose names the funds are respectively standing become bound by such scheme, service on these various corporations and persons is unnecessary on an application for the transfer of the funds to the account of the official trustees (*Re Rector of St. Albans, Wood Street* (1891), 66 L. T. (N.S.) 51, following *Re Prebendary of St. Margaret's, Leicester* (1864), 10 L. T. (N.S.) 221).

(b) *Transfer to credit of an action.*—If the money is to be transferred to the account of an administration action, the petition ought not to be served on all the parties to the suit, but they ought to join in the petition, unless there are special reasons why they should not, the costs of the petitioner and of the trustees of the will under which the land was devised only were allowed against the promoters in such a case (*Melling v. Bird* (1853), 22 L. J. Ch. 599; *Re Picton's Estate* (1855), 3 W. R. 327). It would appear to be sufficient on such applications that the plaintiff should alone appear (*Eden v. Thompson* (1864), 2 H. & M. 6). The trustee of the estate, if defendant, is probably a necessary party to the application, and has been allowed his costs of appearance (*In re English's Settlement* (1888), 39 Ch. 556), and if it is necessary to serve the other parties, their costs will be allowed (*Dinning v. Henderson* (1848), 2 De G. & Sm. 485), and if their appearance is necessary these costs also will be allowed (*Henniker v. Chafy* (1860), 28 Beav. 621). It would probably be advisable to serve the parties and object to their appearance under rule 19, *supra*, p. 189, as the above

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decisions are somewhat conflicting as to whether it is necessary that the parties should appear or not, and the general principle laid down in *In re Gore-Langton's Estate* (1875), L. R. 10 Ch. 328, *supra*, will probably be followed.

If the fund is transferred to the credit of an action, and the names of the promoters and of the special Act and Lands Clauses Act are omitted from the title of the account, the promoters will cease to have any liability in respect of costs, and if they are served and appear they will be entitled to their costs as against the petitioner (*Fisher v. Fisher* (1874), L. R. 17 Eq. 341; *Prescott v. Wood* (1868), 37 L. J. Ch. 691; *Nock v. Nock*, W. N. (1879) 125). In *Brown v. Fenwick* (1866), 35 L. J. Ch. 241, the money had been paid in to the credit of an administration action, but with a direction that it was not to be paid out without notice to the company who paid it in; by a mistake the account was not entitled in the matter of the special Act. It was held that there was no jurisdiction to order the company to pay the costs of an application for reinvestment, but they were left to pay their own costs. In that case it does not appear whether the account was entitled in the name of the company or not; but in a later case it has been held that the court has jurisdiction to order the promoters to pay the costs after a transfer if the account is entitled *ex parte* the promoters, although it is not entitled in the matter of the Lands Clauses Act, or the special Act (*Drake v. Greaves* (1886), 33 Ch. D. 609).

**V. Costs of obtaining orders for payment of dividends.**—Under these costs are included the costs of preparing a power of attorney to enable bankers to receive the dividends, and if the order is to pay to an incumbent of a parish for the time being, the promoters will be held liable to pay the costs of identification and of a fresh power of attorney when a new incumbent is appointed (*Ex parte Incumbent of Guilden Sutton* (1856), 8 De G. M. & G. 380). The costs incurred in obtaining the dividends on each several occasion when they became due have been ordered to be paid by the promoters (*Ex parte Ecclesiastical Commissioners* (1870), 39 L. J. Ch. 623). In two earlier cases under similar provisions in special Acts, the court held the proper construction of this proviso as to costs to be that the company was bound to pay only the costs of the order for payment of dividends and not the costs of the payment of the dividends (*Ex parte Althorpe* (1839), 3 Y. & C. Ex. 396; *Mitchell v. Newell* (1844), 3 Rail. Cas. 515).

When dividends are payable to trustees, the order should be so drawn as to enable them to be paid to any new trustees that may be appointed without a further application to the court. See s. 70, note "Forms of order," *ante*, p. 162. If the order is not so drawn, it would appear to be doubtful if the promoters will be ordered to pay the costs of an application by the new trustees. The court refused to order them to pay the costs in *In re Pryor's Settlement* (1876), 35 L. T. (N.S.) 202; *Re Audenshaw's School* (1863), 1 N. R. 255; and *cf. Ex parte Hordern* (1848), 2 De G. & S. 263, but ordered them to pay such costs in *Re Goe's Estate* (1854), 3 W. R. 119; *Re Bazett's Trustees* (1850), 16 L. T. (O.S.) 279; *In re Metropolitan Rail. Co. and Maire*, W. N. (1876) 245. Where the dividends were payable to two persons as joint committees of a lunatic and one died, the promoters were ordered to pay the costs of the application to pay the dividends to the other solely, but the court ordered the future dividends to be carried to the credit of the matter of the lunacy so that in case of future applications it would not be necessary to serve the promoters (*In re Ryder* (1887), 47 Ch. D. 595).

As to costs of a second application made necessary by reason of subsequent dealings, see Note VII., *infra*, p. 196.

**VI. Costs of obtaining orders for the payment out of the principal.**—

These costs are specially provided by s. 80, and will be ordered on an application for payment out (*In re Gooch's Estate* (1876), 3 Ch. D. 742).

Under several special Acts, such costs have been refused in the absence of special provision (see, for example, *Ex parte Earl of Hardwick* (1848), 17 L. J. Ch. 422; *Re Bristol and Exeter Rail. Co.* (1847), 11 Jur. 686), but if the Lands Clauses Act is incorporated, costs will be awarded (*Re Ellison* (1856), 25 L. J. Ch. 379).

In the case of persons absolutely entitled, part may be paid out and part invested, and the costs of such an application are allowed (*Re Jones's Estate* (1870), 39 L. J. Ch. 190).

These costs will include the costs of a disentailing assurance if required (*Devises of Brooking v. South Devon Rail. Co.* (1859), 2 Giff. 31; *cf. Ex parte Allen* (1881), 7 L. R. Ir. 124), and of investigating the title of the person claiming, but not the costs of affidavits in answer to claims set up (*In re Spooner's Estate* (1854), 1 K. & J. 220; *In re Singleton's Estate* (1863), 9 Jur. (n.s.) 941), and of registering title (*In re Belfast and Northern Counties Rail. Co., Ex parte Gilmore*, [1895] 1 I. R. 297).

Where persons were appointed trustees for the purposes of the Settled Land Acts of two estates under a compound settlement and part of one estate was taken, the court refused to order a railway company to pay the costs of the order appointing the trustees (*In re Waterford and Limerick Rail. Co., Ex parte Harlede*, [1896] 1 I. R. 507).

If the money has been invested in securities, the costs will include the brokerage payable on the sale (*In re Magdalen College, Oxford*, [1901] 2 Ch. 786).

If the land taken is a lease and part of the corpus requires to be sold every six months, the promoters will be required to pay the costs of such sale (*Re Long's Estate* (1853), 1 W. R. 226; *In re Edmunds* (1866), 35 L. J. Ch. 538).

If by reason of the parties living in Jersey a power of attorney is necessary to enable them to receive the money, the promoters will be ordered to pay the costs of preparing and verifying the execution of the power (*In re Godley* (1847), 10 Ir. Eq. 222).

Where the money is paid into court in respect of a leasehold and the landlord has a right of re-entry if the rent is unpaid and part is in arrear and notice is given to him by the promoters, in consequence of which he attends the hearing of the application, he will be entitled to his costs although his claim be settled by the lessee (*Re London Street, Greenwich, etc. Act* (1887), 57 L. T. (n.s.) 673).

Where there have been two unsuccessful applications for payment out, the promoters have not been ordered to pay the costs of the third, although successful (*Ex parte Winder* (1877), 6 Ch. D. 696, p. 704).

Where the money has been paid into court by reason of the vendors not being able to make a good title owing to there being no administrator to certain parties who had died having vested interests, and in order to get the money out, such administrators became necessary, the promoters were ordered to pay the costs of the several letters of administration, as, had it not been for the land being taken, no such proceeding would have been necessary (*In re Dublin Junction Railway, Ex parte Kelly* (1893), 31 L. R. Ir. 137; *Ex parte Rorke, In re Midland Great Western Rail. Co.*, [1894] 1 I. R. 146).

These cases were followed by STIRLING, J., in *In re Lloyd and North London Railway (City Branch) Act*, 1861, [1896] 2 Ch. 397, although he seems to have doubted if in their absence he would have come to the same conclusion.

Where the owner of the land died in Australia after the award, the council were ordered to pay the costs of a power of attorney from the Australian administrator and the costs of the grant of administration in Ireland (*Ex parte Lurgan Urban District Council, In re Kearns*, [1902] 1 I. R. 157).

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The costs of unsuccessful applications for payment out, including the costs of the promoters, may be ordered to be paid by the petitioner (*In re Smith* (1888), 40 Ch. D. 386).

*Transfer to another account.*—The transfer of the fund in court to another account from which the name of the promoters is omitted, is equivalent to a payment out. It is a payment out of court from one fund to pay it in to another fund; the promoters will, therefore, be ordered to pay all costs properly incurred in connection with the application for transfer (*Melling v. Bird* (1853), 22 L. J. Ch. 599; *Re Bristol Free Grammar School* (1878), 47 L. J. Ch. 317; *Re Rector of St. Albans, Wood Street* (1891), 66 L. T. (N.S.) 51; *Attorney-General v. St. John's Hospital, Bath*, [1893] 3 Ch. 151).

**VII. Costs of all proceedings relating thereto.**—Where remaindermen objected to the application of moneys in rebuilding, and the petition was heard a second time at their instance, and appealed, the appeal being in part successful, the promoters were only ordered to pay the costs of one hearing in the court below; the costs of the petitioner, the remaindermen and the trustees were ordered to be paid out of the fund (*In re Leigh's Estate* (1871), L. R. 6 Ch. 887).

*Costs due to subsequent dealing with property.*—There is some conflict of decisions as to whether the promoters are liable for the costs of applications necessary by reason of the owner of the property in court dealing with it after it has been paid in, either by re-settling it or mortgaging it. The latest authorities are in favour of making the promoters liable for the costs of such applications rendered necessary by any reasonable dealing with the property.

In the case of *In re Brooshoof's Settlement* (1889), 42 Ch. D. 250, 253, KAY, J., expressed the opinion that the company must take the land subject to the possibility that in ordinary events the owner may deal with it, or the proceeds of it by way of settlement or mortgage, and if that increases the cost of payment out or of any order of the court concerning the money, the company must pay the increased costs. In this case the tenant for life had, under power in a settlement, appointed the purchase money, and on the application for payment out by the appointees, it had been necessary to serve the trustees of the settlement. Such extra costs were ordered to be paid by the company, KAY, J., following the case of *Re Lye's Estate* (1866), 13 L. T. (N.S.) 664, and see *per* Lord HATHERLEY, *Eden v. Thompson* (1864), 2 H. & M. 6, p. 9, to the contrary (*In re Byrom* (1859), 5 Jur. (N.S.) 261).

Where by a will made before the land was taken the uses subject to which it was held were afterwards changed, the promoters were held liable to pay the costs of the investment of the land to the new uses (*In re De Beauvoir's Trusts* (1860), 29 L. J. Ch. 567).

Where a person on becoming absolutely entitled re-settled the property and applied to have the dividends paid to himself, the court refused to order the company to pay his costs (*In re Pick's Settlement* (1862), 31 L. J. Ch. 495). In the case of *In re Shakespeare Walk School* (1879), 12 Ch. D. 178, HALL, V.-C., expressed the opinion that it would be unreasonable to order the company to pay the costs of an order occasioned by a tenant for life, who had obtained an order for payment to him of the dividends, and subsequently assigned his interest; but considered that where trustees of a charity were receiving the dividends under an order, and by a new scheme rendered necessary by the object of the charity failing, new trustees were appointed, the company should pay the costs of the order for payment to the new trustees.

But the costs of the settlement of a new scheme and of the preparation

and execution of a deed to carry it into effect were not ordered to be paid by the promoters (*Re St. Paul's Schools, Finsbury* (1883), 48 L. T. (N.S.) 412).

Where the owner, a reversioner, had mortgaged his reversion, and on the death of the tenant for life, petitioned for payment out, NORTH, J., ordered the promoters to pay the costs of serving the mortgagee and the costs of his appearance, limited as to the latter to 42s. (*In re Olive's Estate* (1890), 44 Ch. D. 316, following the *dicta* of PAGE WOOD, V.-C., in *Eden v. Thompson* (1864), 2 H. & M. 6, and of KAY, J., in *In re Brooschooft's Settlement* (1889), 42 Ch. D. 250, cited above, and dissenting from *In re Gough's Trusts* (1883), 24 Ch. D. 569, and not following *Re Jones's Trust Estate* (1870), 18 W. R. 312, and see *Ex parte Peyton* (1856), 4 W. R. 380).

"By litigation between adverse claimants."—Where there are adverse claims to the land, and the money is paid into court at the request of one of the parties, and after the question is settled an application (although without litigation) is made for payment out, the promoters will not be liable to pay any costs (*Re English* (1865), 13 W. R. 932).

But if the promoters, knowing that there is a dispute as to the title, pay the money in under s. 76, executing a deed poll, they will be required to pay the general costs of the application for payment out although not those of the parties claiming adversely, apparently, even if such parties are in part successful nor of any costs occasioned thereby (*Ex parte Cooper, Re North London Rail. Co.* (1865), 13 W. R. 364; *Ex parte Palmer* (1849), 13 Jur. 781; *Hore v. Smith* (1850), 14 Jur. 55; *Re Duke of Norfolk's Estates* (1874), 22 W. R. 817).

Similarly, if knowing that there is a dispute they take two conveyances, one from each claimant, paying two sums into court, and on the application for investing one sum the other claimant is served, they will have to pay the costs of such service as the two claimants have been treated as vendors and not as litigants (*In re Butterfield* (1861), 9 W. R. 805).

If after the fund is paid in there are rival claimants in respect of it, the promoters, although they will have to pay the costs of the right claimant proving his title, will not have to pay any additional costs caused by the conduct of the rival claimants. Thus, the costs of affidavits by the two claimants in answer to claims made with respect to persons who answered advertisements for heirs were not payable, but the costs of proving the pedigree of the right claimants were payable (*In re Spooner's Estate* (1854), 1 K. & J. 220). If on an application there are rival claims and a question of title is argued, the promoters pay only one set of costs, apparently that of the successful party (*In re James Longworth* (1853), 1 K. & J. 1; *Ex parte Yates* (1869), 20 L. T. (N.S.) 940; *In re Callings's Estate*, W. N. (1890) 75); but in one case where the promoters were ordered to pay one set of costs, that set was to be the best costs for the parties, the balance to come out of the fund (*Re Mid-Kent Railway Act, Ex parte Styau* (1859), Joh. 387).

The unsuccessful claimants may be ordered to pay the petitioner's costs occasioned by their adverse claim as well as their own costs (*Ex parte Great Southern and Western Rail. Co.* (1877), 1 R. 11 Eq. 497).

If two applications for payment of dividends are rendered necessary by reason of disputes between a tenant for life and his incumbrancers, the promoters will not be required to pay the costs of the second application (*In re Jolliffe* (1857), 3 Jur. (N.S.) 633).

If the parties present before the court are required to argue a question of construction, and the costs are not thereby increased, the promoters will be liable to pay all the costs (*Tookey's Trusts* (1852), 16 Jur. 708).

Where costs are incurred by reason of the court being required to say

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how a fund is to be distributed under the Act, these costs are not costs of adverse litigation and are payable by the promoters. Thus where the court are required to determine the interests of a lessee and a remainderman in the fund under s. 74, the company must pay all costs (*Askew v. Woodhead* (1880), 14 Ch. D. 27, p. 36). Similarly, if the fund in court is deposited in respect of land in the possession of a mortgagee, and the mortgagor petitions for an inquiry as to what was due on the mortgage and for payment to him of the residue, the promoters will be ordered to pay the costs of the petition and of the inquiry (*In re Bareham* (1881), 17 Ch. D. 329; *In re Olive's Estate* (1890), 44 Ch. D. 316), and also of an inquiry to ascertain the different interests of several persons in land taken and assessed for a lump sum (*Ex parte Great Southern and Western Rail. Co.* (1877), 11 I. R. Eq. 497), and of the argument upon a question of construction, so as to ascertain a class among whom the money is divisible (*Re Gregson's Trusts* (1864), 2 H. & M. 504, reversed on appeal as to another point (1864), 13 W. R. 193).

**Apportionment of costs among several bodies.**—If there are two or more funds in court paid in by different corporate bodies, the applications in respect of them should as far as possible be made on one summons or petition. See s. 70, note, "Practice generally," *ante*, p. 158.

The rule as to how the costs should be borne was laid down by the Lords Justices in *Ex parte Bishop of London* (1860), 2 De G. F. & J. 14, where a form of order will be found. According to that rule the costs of the petition and of the purchase are payable in equal proportions by the companies or corporations, but the cost of the *ad valorem* stamp is to be payable rateably by them according to the respective amounts of the funds. It has also been held that the surveyor's fee should be paid rateably (*Ex parte Corporation of London* (1868), L. R. 5 Eq. 418). Such fee is usually a commission of so much per cent. on the amount of the purchase money, and the taxing master may allow a fee so calculated (*Attorney-General v. Drapers Co.* (1869), L. R. 9 Eq. 69).

There appears to be some doubt as to whether the above rule that the costs are to be borne equally is applicable when there is great inequality in the amount of the funds to be invested. In cases where the scale fee is adopted there is, since the passing of the Solicitors' Remuneration Act, 1881, a means of apportioning the costs of purchases of land, and CHITTY, J., ordered the scale fee to be apportioned rateably according to the amounts (*In re Bishopsgate Foundation*, [1894] 1 Ch. 185).

Previous to the passing of the above Act, STUART, V.-C., in *Ex parte Christ Church* (1861), 9 W. R. 474, and MALINS, V.-C., in *Ex parte St. Bartholomew's Hospital* (1875), L. R. 20 Eq. 369, had held that in cases of great inequality in the amounts contributed from the different sources, the cost of investment in land ought to be borne in proportion to the amount contributed.

JESSEL, M.R., in *Ex parte Gaskell* (1876), 2 Ch. D. 360, appeared to hold the same opinion in regard to investment in land, but held that where the petition is merely for payment out that the costs should be borne equally, as the costs of such a petition would be the same in the case of a large sum as of a small one. But now that sums under £1,000 may be paid out upon application by summons, NORTH, J., in a case for transfer of funds paid in by three companies, ordered that as the funds of two of the companies were each under £1,000 that these companies should only have to pay the amount which they would have to pay if the application had been made by summons (*Attorney-General v. St. John's Hospital, Bath*, [1893] 3 Ch. 151). Where, however, there were several bodies, and proceeding by petition was cheaper, the costs of a petition for transfer was ordered to be borne equally although certain of the sums were under £1,000 (*Re Rector of St. Alban's, Wood Street*

(1891), 66 L. T. (N.S.) 51). See also *Ex parte Curate of Bilston* (1889), 37 W. R. 460, and note, *supra*, "Fund invested with other money," p. 186.

The rule that the costs must be borne equally was observed more strictly in the earlier cases. PAGE WOOD, V.-C., in *Ex parte Governors of Christ's Hospital* (1864), 2 H. & M. 166, held that mere inequality was not a ground for departing from the rule, and that the rule applied, except in cases of oppression, as when a particular company had been vexed by a number of petitions while other companies were let off with one only. The Lords Justices, in *In re Byron's Estate* (1863), 1 De G. & S. 358, held that the rule was not to be disturbed except in cases of extreme hardship, and refused to disturb it, although only a small part of a remnant of a fund in court was to be taken to make up the price with other larger sums, so that a third application in respect thereof would have to be made (*In re Merton College* (1864), 1 De G. J. & S. 361; *Ex parte Trinity College, Cambridge* (1868), 18 L. T. (N.S.) 849).

The Court of Appeal in *In re Leigh's Estates* (1871), L. R. 6 Ch. 887, followed the above rule in the case of payment out of the money to be applied in buildings, although there was considerable inequality, and see also *London, Brighton and South Coast Rail. Co. v. Shropshire Union Rail. Co.* (1856), 23 Beav. 605.

*When companies have amalgamated.*—If money has been paid into court by several companies which afterwards amalgamate, the new company formed of the amalgamated companies, for the purposes of costs of investment is to be treated as one company, so that if money is paid in by four different companies and three amalgamate, the costs of investing the whole fund will be borne equally by the new company and the other company instead of the amalgamated company bearing three-fourths and the other one-fourth (*Ex parte Corpus Christi College, Orford* (1871), L. R. 13 Eq. 334; *Ex parte Gaskell* (1876), 2 Ch. D. 360, not following *In re Maryport Railway Act* (1863), 32 Beav. 297, and see also *In re Midland Great Western Rail. Co.* (1881), 9 L. R. Ir. 16).

In an earlier case where three railway companies had taken land and paid money into court, and afterwards one company leased its railway to one of the others for 999 years, but existed to receive the rental and distribute it, the costs were ordered to be paid in equal shares by the three companies (*Re Carlisle and Silloth Rail. Co.* (1863), 33 Beav. 253).

And with respect to the conveyances of lands (a), be it enacted as follows :

(a) Sections 81—83.

**81.** Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the Schedules (A.) and (B.) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit ; and all conveyances made according to the forms in the said schedules, or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or

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**Sect. 81.** interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances, which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

The forms in the schedule are not in general use as they are difficult to alter for the purpose of inserting recitals, covenants, and other provisions, and since the Conveyancing Act, 1881, their use does not lead to brevity, compared with the ordinary forms.

Costs of conveyances.

**82.** The costs of all such conveyances shall be borne by the promoters of the undertaking; and such costs shall include all charges and expenses; incurred on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

**"All charges and expenses, incurred."**—The 11th rule in Sched. I., Part 1, of the General Order under the Solicitors' Remuneration Act, 1881, provides that "in case of sales under the Lands Clauses Consolidation Act, or any other private or public Act under which vendor's charges are paid by the purchaser, the scale shall not apply."

The intention is that the liberal allowance to vendors of costs under s. 82 shall not be interfered with. And this is so where a local authority purchase by agreement under the powers of a public Act which incorporates the Lands Clauses Acts (*In re Burdekin*, [1895] 2 Ch. 136). The above order, therefore, applies to sales only, that is to say, to the costs of the vendor; but if promoters employ a solicitor to negotiate purchases, his costs are governed by the scale (*In re Stewart* (1889), 41 Ch. D. 494; *In re Merchant Taylors' Co.* (1885), 30 Ch. D. 28).

In the same case *KAY, J.*, held that the scale does not apply to the grant of an easement, such as the right to lay and maintain water pipes through the lands of other persons.

**"Of all conveyances."**—The conveyance begins when the thing to be conveyed is ascertained. The promoters are not liable, therefore, for the costs of ascertaining what is to be conveyed, and are not, therefore, required to pay the cost of apportioning the rents where a part of leasehold premises is purchased by agreement. The costs of preparing a map to be annexed to the conveyance, also of a schedule showing the apportionment, including the surveyor's charges for looking over it, are payable by the promoters (*Ex parte Buck* (1863), 1 H. & M. 519). As to costs of apportionment,

see notes to s. 80, at p. 182, and s. 119, *post*, p. 245. The costs of conveyancing counsel are payable subject to taxation (*In re Spooner's Estate* (1854), 1 K. & J. 220).

Where a railway company purchased lands from a colliery company, and part of the agreement was that the railway company should carry the vendor's coals at a fixed price, it was held that this agreement was collateral, and that the costs of the instrument embodying the agreement were not payable by the company as part of the costs of the conveyance (*Re Leitch and Kearney* (1867), 15 W. R. 1055).

**"Of deducing, evidencing, and verifying the title."**—If the promoters of an undertaking require letters of administration to be taken out or some act to be done in order that the vendor may be able to formally complete a title which is in substance good, they will have to pay the costs thereof. Thus, where a testator had bequeathed leasehold property and the executor had died, and the promoters, in order to acquire a good title, required that administration *de bonis non* should be taken out, they were ordered to pay the costs thereby occasioned (*In re Liverpool Improvement Act* (1868), L. R. 5 Eq. 282, overruling *In re South Wales Rail. Co.* (1851), 14 Beav. 422, a case where proceedings were required under the Trustee Acts to enable an infant to convey; and see *Re Manchester and Southport Rail. Co.* (1854), 19 Beav. 365; *In re Lowry's Will* (1872), L. R. 15 Eq. 78). So, where land was to be purchased from the transferee of a deceased mortgagee whose heir could not be discovered, the promoters were ordered to pay the costs of a petition by the vendor for the appointment of a person to convey to the company in place of the heir-at-law (*Re Nash's Estate* (1855), 4 W. R. 111; *Re Eastern Counties, etc. Rail. Co., Ex parte Care* (1855), 26 L. T. (o.s.) 176).

In a case where a landowner had agreed to sell land to a company, and it appeared that a small part thereof was mortgaged, the company were held not to be liable to pay the costs occasioned in getting the mortgage discharged, the court apparently being of opinion that the vendor had agreed to sell the fee freed from the mortgage, and it was expressly stated that the case was so decided, owing to the peculiar circumstances (*Ex parte Phillips* (1862), 32 L. J. Ch. 102).

The principle laid down in *In re Liverpool Improvement Act*, *supra*, has been adopted in Ireland, and it was held that promoters taking land from a person who had been in possession of leasehold premises for more than twelve years were bound to pay not only the costs of taking out administration to the previous assignee of the premises, but of the conveyance by the administrator of such assignee to the person in possession (*In re Dublin (South) City Market Co., Ex parte Keatley* (1890), 25 L. R. Ir. 265). They must also pay the costs of registering the title when necessary (*In re Belfast and Northern Counties Rail. Co., Ex parte Gilmore*, [1895] 1 I. R. 297).

The promoters cannot by executing a deed poll under s. 76 escape the payment of these costs, for if they are incurred in order to have the money paid out of court, they will be ordered to pay them (*In re Dublin Junction Railways, Ex parte Kelly*, [1893] 31 L. R. Ir. 137; *In re Lloyd and North London Railway (City Branch) Act*, 1861, [1896] 2 Ch. 397, and cases cited in notes to s. 80, Note VI., *ante*, p. 195). And if they pay money, in because the vendors refuse to stamp certain documents, they will have to pay the costs of the application to have it paid out (*Ex parte Birkbeck Freehold Land Society* (1883), 24 Ch. D. 119). And if after a conveyance has been prepared the promoters pay the money into court, they will be ordered, under s. 80, to pay the costs incurred in and about the abstract and preparation of the conveyance (*In re Crystal Palace Rail. Co. and Divers* (1855), 1 Jur. (n.s.) 995).

Costs of deducing title have been allowed under a special Act, which

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merely directed that the company should pay the costs of "contract, sale, and conveyance" (*Ex parte Trustees of Addey's Charity* (1843), 12 L. J. Ch. 513). But if there is no such provision in the Act and the Lands Clauses Acts are not incorporated, the court has no jurisdiction to order the costs either of deducing the title or of the conveyance; but it would appear that such costs can be paid out of the purchase money in court (*Re Strachan's Estate* (1851), 9 Ha. 185).

Prior to the Conveyancing Act, 1881, when a person had contracted to sell land and died, and the estate descended to an infant heir or devisee, or if he died intestate and without an heir, proceedings had to be taken either under the Trustee Acts or by action to enable the purchaser to obtain the conveyance. In such cases questions frequently arose as to whether or not promoters were liable to pay the costs thereby occasioned. See cases collected in Browne and Theobald's *Law of Railways*, 2nd ed., p. 206. By s. 4 of the above Act, the personal representatives are empowered to convey "where at the death of any person there is subsisting a contract enforceable against his heir or devisee for the sale of the fee simple or other freehold interest descendible to his heirs in general in any land."

**Taxation  
of costs of  
conveyances.**

**83.** If the promoters of the undertaking and the party entitled to any such costs (a) shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery [*or by a Master in Chancery in Ireland*] (b), upon an order of the same court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs (c); and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

(a) These are the costs mentioned in last section.

(b) These words have been repealed by the Statute Law Revision Act, 1892.

(c) Sections 34 and 53, and see notes thereto, *ante*, pp. 63, 91.

**"Upon an order."**—For Forms of Order, see Seton on Decrees.

Promoters who have paid the costs of conveyance cannot obtain subsequently an order as of course to have their costs taxed under this section, and such an order will be set aside (*Ex parte Somerville* (1883), 23 Ch. D. 167). Where an inquisition has been abandoned and occupation has been given on the company's undertaking to pay costs, it would appear that they cannot be taxed under this section (*Marquis of Drogheda v. Great Southern and Western Rail. Co.* (1847), 12 Ir. Eq. 103).

The court has jurisdiction to review the master's taxation under this section (*Owen v. London and North Western Rail. Co.* (1867), L. R. 3 Q. B. 54, p. 60; *Sandback Charity Trustees v. North Staffordshire Rail. Co.* (1877), 3 Q. B. D. 1, p. 5).

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And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows (a) :

(a) Sections 84—91.

**84.** The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the bank, in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein : Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

Payment of price to be made previous to entry, except to survey, etc.

**"Shall not . . . enter."**—The interference with an easement belonging to a neighbouring owner over the land taken is not an entry upon the easement within this section, and the owner's remedy is not an action for injunction, but for compensation under s. 68, and this is so whether or not the definition of lands in the special Act includes easements and rights over lands (*Clark v. London School Board* (1874), L. R. 9 Ch. 120; *London School Board v. Smith, W. N.* (1895) 37; *Duke of Bedford v. Dawson* (1875), L. R. 20 Eq. 353; *Wigram v. Fryer* (1887), 36 Ch. D. 87; *Macey v. Metropolitan Board of Works* (1864), 33 L. J. Ch. 377; *Temple Pier Co. v. Metropolitan Board of Works* (1865), 13 W. R. 535; *Bush v. Trowbridge Waterworks Co.* (1875), L. R. 19 Eq. 291).

If a company are empowered to create an easement over the lands of another, then they can only proceed to create that easement with the consent of the owner or by taking proceedings under the Act to acquire such easement (*Hill v. Midland Rail. Co.* (1882), 21 Ch. D. 143; and see *Great Western Rail. Co. v. Swindon, etc. Rail. Co.* (1884), 9 App. Cas. 787).

And if they are not empowered to create an easement they cannot, of course, enter upon land for that purpose, as, for example, to make an accommodation pathway. They must purchase the land (*Rangely v. Midland Rail. Co.* (1868), L. R. 3 Ch. 306).

If a company are authorised to make a tunnel or to throw a bridge over land, this, in the absence of special provision, does not enable them to acquire only the stratum of land necessary for this purpose; they must take the whole of the land from the centre of the earth *usque ad cælum*. If they

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attempt to enter by depositing only the value of the stratum, or give notice to treat only for the stratum, they will be restrained from proceeding with their works (*Ramsden v. Manchester, South Junction, and Altrincham Rail. Co.* (1848), 5 Rail. Cas. 552; *Pinchin v. Blackwall Rail. Co.* (1854), 1 K. & J. 34). The special Act may, of course, empower the company to acquire an easement only. (See *Great Western Rail. Co. v. Swindon Rail. Co.* (1884), 9 App. Cas. 787.)

It has been the custom in Acts of Parliament and otherwise to describe as easements such rights as those of making tunnels under land without taking the surface, or of throwing bridges over land, or of dedicating foot-paths to the use of the public. To call these "easements" is, however, inaccurate. In *Metropolitan Rail. Co. v. Fowler*, [1893] A. C. 416, it was held that a tunnel is an interest in land—a corporeal hereditament, and not merely an easement. The dedication of a public footway is also not an easement. See per CAIRNS, L.J., *Rangely v. Midland Rail. Co.* (1868), L. R. 3 Ch. 306, p. 310, and note to s. 3, "Lands," *ante*. p. 6.

The right to make a tunnel without being under the obligation to take the surface is, therefore, the right to take an interest in land. It does not matter whether the special Act authorises the company to "appropriate and use the subsoil," as such words are equivalent to "take." See *Metropolitan Rail. Co. v. Fowler*, *supra*. A company so authorised to make a tunnel may be restrained by injunction if they proceed to extract the subsoil without proceeding according to this Act, by purchasing the same, or apparently by deposit under s. 85 (*Farmer v. Waterloo and City Rail. Co.*, [1895] 1 Ch. 527).

The placing of materials on the land with the consent of the tenant is not an entry on the lands so as to entitle the landowner to apply for an injunction (*Standish v. Mayor of Liverpool* (1852), 1 Dr. 1).

If in the special Act there is a proviso that the promoters shall not "take" land until certain conditions have been complied with, the word "take" in such a case would mean taking possession or taking a conveyance (*Spencer v. Metropolitan Board of Works* (1882), 22 Ch. D. 142).

Besides the remedy by injunction the promoters are also liable to a penalty for wrongfully entering upon land. See s. 89, *infra*.

**"Except by consent."**—If the landowner consent to the entry he cannot treat the promoters as tenants at will, and in the event of a dispute arising revoke the consent and bring an action of ejectment or trespass. His remedy is to recover compensation under the Act (*Knapp v. London, Chatham, and Dover Rail. Co.* (1863), 11 W. R. 890; *Doe d. Hudson v. Leeds and Bradford Rail. Co.* (1851), 16 Q. B. 796).

The landowner may by his conduct and silence be considered to have consented, and if so an injunction will not be granted at his instance (*Greenhalgh v. Manchester and Birmingham Rail. Co.* (1838), 3 My. & Cr. 784), but merely refraining from taking action is not enough, as, for example, if the owner did not know that the land, being a roadway, did not belong to him (*Marquis of Salisbury v. Great Northern Rail. Co.* (1858), 5 C. B. (N.S.) 174).

If there is a dispute as to whether a landowner has consented or not and a company have entered, the court will not interfere by injunction to stop the works, but will order the proximate value to be deposited until the amount is determined (*Langford v. Brighton, Leves and Hastings Rail. Co.* (1845), 4 Rail. Cas. 69). A similar order was made where it was shown that a company had found it necessary to enter in order to insure public safety, and that subsequent to the entry the landowner had treated with the company in respect thereof (*Tower v. Eastern Counties Rail. Co.* (1843), 3 Rail. Cas. 374). As to entry upon land to repair damage caused by accident and ensure safety, see the Railways Regulation Act, 1842 (5 &

6 Vict. c. 55), ss. 14, 15, in note to s. 16 of the Railways Clauses Act, 1845, *post*.

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**"Until they shall have paid."**—This section must be read with the further proviso in s. 85 enabling the promoters of an undertaking upon certain conditions to enter without the consent of the owner and before making payment or deposit, as mentioned in this section. If they enter with the consent of the owner, or without his consent under that section, the landowner has in respect of his purchase money the ordinary equitable lien of an unpaid vendor which can be enforced by action, whether the price has been determined by agreement or by inquisition. See the cases collected in notes to s. 85, note, "Vendor's lien." And see, for example, *Wing v. Tottenham and Hampstead Junction Rail. Co.* (1868), L. R. 3 Ch. 740.

**"To every party having any interest."**—An action will lie for an injunction to restrain a company retaining possession of land, even where the plaintiff's interest is merely a lien for improvements done to the land (*Rogers v. Dock Company at Kingston-upon-Hull* (1864), 34 L. J. Ch. 165), or an equitable right to possession under building agreements (*Birmingham and District Land Co. v. London and North Western Rail. Co.* (1888), 40 Ch. D. 268).

If the promoters take possession, and by mistake some interest is omitted to be purchased, they are entitled to remain in possession for six months to enable them to purchase. See s. 124, and notes, *post*, p. 251.

**"Of surveying."**—If the promoters enter for this purpose they must give the requisite notice, but where they had entered without such notice, but merely to survey and level and set out the line of their works, the court refused to grant an injunction, on their undertaking not to proceed further without giving the proper notices (*Fooks v. Wilts, Somerset and Weymouth Rail. Co.* (1846), 4 Rail. Cas. 210).

**85.** Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made or verdict given for the purchase money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the bank by way of security, as hereinafter mentioned, either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, with two sufficient sureties, to be approved of by two justices in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security and giving bond.

**Sect. 85.** for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands as the case may require, under the provisions herein contained, of all such purchase money or compensation as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon at the rate of five pounds per centum per annum from the time of entering on such lands until such purchase money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

In the case of railway companies, this section has been amended by the Railway Companies Act, 1867 (see 30 & 31 Vict. c. 127, s. 36, *post*). By that Act the Board of Trade appoints the surveyors and approves the sureties.

**"The promoters of the undertaking."**—Where the promoters are a public authority, the special Act may contain provisions wide enough to exclude ss. 84 and 85; thus it was held that the Metropolitan Board of Works might enter upon land for the purpose of making a sewer under the powers of their Act which incorporated these sections, without depositing the purchase money or executing a bond (*North London Rail. Co. v. Metropolitan Board of Works* (1859), 28 L. J. Ch. 909; and see *per* COTTON, L.J., *In re Corporation of Dudley* (1881), 8 Q. B. D. 86, p. 96).

In the case of water companies, see Waterworks Clauses Act, 1847, s. 6, *post*, which empowers them to enter upon streams on making a deposit.

**"Before an agreement," etc.**—It is not clear as to whether the promoters can proceed under this section until after they have either given a notice to treat under s. 18, or made an agreement to purchase. Lord WATSON, in *Tiverton Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480, p. 501, and in *Great Western Rail. Co. v. Swindon Rail. Co.* (1884), 9 App. Cas. 787, p. 805, gave it as his opinion that the promoters could not enter and use under this section until they had acquired a right as purchasers under an inchoate or imperfect contract constituted by compulsory notice to treat or by agreement. In the former case, this opinion was not questioned by either Lord CAIRNS or BLACKBURN, but in the latter case, Lord BRAMWELL (p. 810) expressed the opposite opinion, and considered that the sections dealing with the taking of land (ss. 16—68), had no application to those in regard to entering upon land, *i.e.*, to ss. 84—91, and Lord FITZGERALD apparently agreed with him (*cf. Ford v. Plymouth, etc. Rail. Co.*, W. N. (1887) p. 210).

If the company desired to enter in order to acquire a perpetual easement under their special Act, it is not necessary that the capital should be sub-

scribed as provided by s. 16 (*Great Western Rail. Co. v. Swindon Rail. Co.* (1884), 9 App. Cas. 787).

It is clear, however, that once they have given the notice to treat that they can enter under this section at any time until the expiration of the time limited for carrying on the works.

Thus, they may enter after having given notice of their intention to summon a jury, and may change the appearance of the land so that a jury may not be able to form an opinion as to its value (*Langham v. Great Northern Rail. Co.* (1848), 1 De G. & S. 486).

If the notice to treat has been given, the entry under this section can be made after the period for compulsory purchase has expired as such entry is not an exercise of the powers of compulsory purchase (*Marquis of Salisbury v. Great Northern Rail. Co.* (1852), 17 Q. B. 840), and it can be made at any time before the expiration of the time limited for the execution of the works if made *bona fide* and for the purpose of the works, and whether the works can be completed within the time limited or not, and the promoters can continue in possession after that time, and complete the works (*Tiverton Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480). Similarly, after such entry, the amount of the purchase money may be assessed subsequently to the expiration of the time limited for completion of the works (*S.C.*, and *Doe d. Armistead v. North Staffordshire Rail. Co.* (1851), 16 Q. B. 526).

It has been said that a company cannot take advantage of this section unless there is urgent necessity for immediate entry on the lands (*per* MALINS, V.-C., in *Field v. Carnarvon and Llanberis Rail. Co.* (1867), L. R. 5 Eq. 190), but in *Loosemore v. Tiverton* (1882), 22 Ch. D. 25, p. 46, SELBORNE, L.C., pointed out that there were no words to that effect in the Act, and see FRY, J., to the same effect; and *cf.* *Willey v. South Eastern Rail. Co.* (1849), 6 Rail. Cas. 100.

If a notice to treat has been given, and the promoters enter under this section, it is doubtful whether they can be compelled to proceed, or whether they themselves can proceed under s. 23 to have compensation ascertained, or whether the landowner must take the initiative and have the compensation assessed under s. 68. Lord COTTENHAM considered s. 68 applicable, and refused to order a company who had entered under s. 85 to summon a jury under s. 23 (*Adams v. London and Blackwall Rail. Co.* (1850), 2 M. & G. 118). In *Tiverton Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480, Earl CAIRNS thought that the proceedings should go on under s. 68 (p. 491), but Lord BLACKBURN thought that the landlord might proceed under the notice to treat, and saw nothing to prevent the promoters from issuing their warrant and having the price ascertained against an unwilling vendor after they have entered (pp. 498, 499).

**Deposit the amount of the purchase money.**—As to how the deposit is to be made, see s. 86, and Supreme Court Funds Rules, 1894, set out in the notes to s. 69, *ante*, p. 134.

The amount to be deposited should include not only the actual value of the land, but also the compensation for severance and for injuriously affecting the lands held therewith, which matters are to be taken into account in assessing the purchase money (*Field v. Carnarvon and Llanberis Rail. Co.* (1867), L. R. 5 Eq. 190, and see ss. 49 and 63, *ante*, pp. 82, 96).

Where a railway company were authorised to construct a tunnel through land without purchasing the surface, unless it was found by a jury or arbitrator that the tunnel could not be made without risk thereto, it was held that only the value of that right or stratum need be deposited before entry (*Hill v. Midland Rail. Co.* (1882), 21 Ch. D. 143).

Where a railway company are by their special Act authorised to take part only of buildings, if in the opinion of a jury or arbitrator they can be severed without material detriment, and an arbitrator decides that they can

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be so severed, the company can enter under this section on depositing only the value of the part to be taken (*Lambert v. Dublin, Wicklow, and Wexford Rail. Co.* (1890), 25 L. R. Ir. 163).

It has been held that it is the value of the land referred to in the notice to treat that is to be deposited. Where by subsequent negotiations between surveyors of the parties it was agreed that less land should be taken than that stated in the notice to treat, and the amount deposited was in respect of that lesser quantity, the entry was held bad as the surveyor was not the landowner's agent to make this alteration, or to make the claim in respect thereof (*Ford v. Plymouth, etc. Rail. Co.*, W. N. (1887) 201).

Where a company had given notice to treat for ten parcels of land apparently used together, it was held that they could not enter upon eight of them by depositing the value of the eight only, but that they must deposit the value of, and give security for, the whole (*Barker v. North Staffordshire Rail. Co.* (1848), 5 Rail. Cas. 401). Possibly these decisions may be affected by what appears to be the ruling of the House of Lords in *Great Western Rail. Co. v. Swindon Rail. Co.* (1884), 9 App. Cas. 787, that s. 85 is wholly independent of s. 18.

It has frequently been held that in cases where a notice to treat has been given and the landowner has given a valid counter-notice under s. 92 requiring that the whole of a house or building should be taken, that the promoters can only enter upon the land after depositing the value of the whole (*Giles v. London, Chatham, and Dorer Rail. Co.* (1861), 30 L. J. Ch. 603; *Underwood v. Bedford and Cambridge Rail. Co.* (1861), 7 Jur. (n.s.) 941; *Gardner v. Charing Cross Rail. Co.* (1861), 2 J. & H. 248). Whatever a company are bound to take under s. 92 must be taken into account and valued if they proceed under s. 85, so that the value of trade fixtures and machinery in a manufactory must be deposited (*Gibson v. Hammersmith Rail. Co.* (1863), 11 W. R. 299). If the counter-notice is invalid, deposit of the value of the part required will be sufficient (*Tiverton Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480).

In a case where the valuation was made by a surveyor appointed under the Lands Clauses Act, for a railway company who entered after the passing of the Railway Companies Act, 1867, on depositing the value so determined, such entry was held invalid, on the ground that the valuation should have been made under the later Act (*Field v. Carnarvon and Llanberis Rail. Co.* (1867), L. R. 5 Eq. 190).

In two cases where the valuation exceeded the amount in court, the promoters have been ordered subsequently to bring the difference into court (*Ashford v. London, Chatham, and Dorer Rail. Co.* (1866), 14 L. T. (n.s.) 787; *Ex parte London, Tilbury, and Southend Rail. Co.* (1853), 1 W. R. 533).

**Minerals.**—The law in respect of minerals when taken by railway companies will be found in the notes to ss. 77—85 of the Railways Clauses Act, 1845, *post*.

As railway companies need not purchase the minerals under the lands, they may enter upon the lands under this section without depositing the value of the minerals, at least, if they are not included in the notice to treat. If, however, after entry without depositing the value of the minerals, they remove any of the minerals, they will be liable in an action of trespass in respect thereof (*Loosemore v. Tiverton Rail. Co.* (1882), 22 Ch. D. 25, pp. 42, 43, and (1884), 9 App. Cas. 480).

In such a case the compensation payable under ss. 78 and 81 of the Railways Clauses Act need not be included in the bond or deposit, although included by agreement in the arbitration held afterwards as to the purchase money, and the condition of the bond will be satisfied without paying such compensation (*Ex parte Neath and Brecon Rail. Co.* (1876), 2 Ch. D. 201; *cf. In re Lord Gerard and London and North Western Rail. Co.*, [1895] 1 Q. B. 459).

**"Claimed by any party interested."**—Where there are mortgagees security should be given in respect of their interest, and it is not enough to pay in the value of the land in the name of the mortgagor, and to execute a bond in his favour, although the amount may be sufficient to cover both claims (*Ranken v. East and West India Docks Rail. Co.* (1849), 12 Beav. 298).

It is competent for promoters to deal solely with any person having a beneficial interest in respect of that interest, and to deposit the value thereof, and give a bond to that person only (*Willey v. South Eastern Rail. Co.* (1849), 1 M. & G. 58).

**"Surveyor appointed by two justices."**—The appointment is made in the manner provided by s. 59.

As there is no provision as to notice the promoters may proceed to have the surveyor appointed and sureties approved *ex parte*, and without notice to the landowner (*Bridges v. Wilts, Somerset, and Weymouth Rail. Co.* (1847), 16 L. J. Ch. 335; *Langham v. Great Northern Rail. Co.* (1848), 1 De G. & S. 486).

If the general valuer of the company is appointed, who has acted as negotiator for the company, the appointment will not on that ground be invalid, although such appointment is unsatisfactory (*Langham v. Great Northern Rail. Co.* (1847), 5 Rail. Cas. 263, p. 266).

As regards railway companies, however, the law has been altered by the Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 36, see *post*. The appointment under that Act is now made by the Board of Trade, and the company are required to give seven days' notice of their intention to apply for the appointment.

**"The value of such lands."**—The surveyor must examine the premises in such a manner as to enable him to form a fair judgment. Mere inspection of the exterior is not sufficient. If it is done fairly the court will not disturb it (*Cotter v. Metropolitan Rail. Co.* (1864), 12 W. R. 1021).

The mere facts that the amount is inadequate and that the surveyor has not sufficient knowledge of the facts to determine the amount of injurious affection, are not sufficient to invalidate his valuation if made *bona fide* (*River Roden Co., Limited v. Urban District Council of Barking Town*, [1902] W. N. 86, on appeal, [1902] W. N. 103).

If the money had been deposited and the bond executed before the surveyor had published his written valuation, this will not invalidate the possession, if it can be shown that the amount had been fairly and properly determined, and that it was by some accident that the surveyor's award was not signed till after the money was paid in (*Stamps v. Birmingham, Wolverhampton and Stour Valley Rail. Co.* (1848), 7 Ha. 251, 256).

**"Give to such party a bond."**—If the amount deposited is insufficient, the bond also will be invalid. See cases in note, "Deposit the amount of the purchase money," *supra*, p. 207. If the promoters enter into possession after giving a defective bond, the court will not restrain that possession if a subsequent valid bond is given, but will consider it as a possession under this section. The court will, however, take care that a proper bond is executed giving the owner the benefit of the Act (*Willey v. South Eastern Rail. Co.* (1849), 1 M. & G. 58; *Poynder v. Great Northern Rail. Co.* (1847), 2 Ph. 330).

The land need not be specially described in the bond if it is identified by the prior transactions (*Willey v. South Eastern Rail. Co.* (1849), 1 M. & G. 58, 68; *Cotter v. Metropolitan Rail. Co.* (1864), 12 W. R. 1021).

**The condition.**—The section requires that the bond shall be conditioned "for payment to such party or deposit in the bank for the benefit of the

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parties interested." No equivalents ought to be introduced otherwise the bond may be invalid. Thus the addition of the words "or otherwise" after "deposit in the bank" was held to invalidate the bond (*Hosking v. Phillips* (1848), 3 Ex. 168); also of the words "on demand" before "pay" and "deposit" (*Poynder v. Great Northern Rail. Co.* (1847), 2 Phil. 330; *Langham v. Great Northern Rail. Co.* (1847), 5 Rail. Cas. 263), and of the words "shall at any time hereafter" before "pay" (*Cotter v. Metropolitan Rail. Co.* (1864), 12 W. R. 1021).

If after the name of the party are added the words "his heirs, executors, administrators, and assigns" the bond will not be invalid, for it is in effect implied that if the party dies payment shall be made to the party entitled to his estate, if freehold to his heirs, if leasehold to his executors (*Hosking v. Phillips* (1848), 3 Ex. 168), so that if the interest of the party is leasehold it is proper and sufficient to add "his executors, administrators, and assigns" (*Willey v. South Eastern Rail. Co.* (1849), 1 M. & G. 58). If the promoters are dealing with the owner of a particular interest only, such as a lessee, the words "the parties interested" may be omitted (*S. C.*).

If the owners of the land are tenants in common the bond will be bad, if the deposit is made in their names jointly, and the condition drawn in a form treating them as joint tenants (*Langham v. Great Northern Rail. Co.* (1847), 5 Rail. Cas. 263).

**"With two sufficient sureties."**—In the case of railway companies these must now be approved by the Board of Trade. Railway Companies Act, 1867, s. 36, *post*.

But under neither Act is the approval required unless the parties differ, and the bond will be valid without such approval unless the landowner dissents (*Loosemore v. Tiverton Rail. Co.* (1882), 22 Ch. D. 25, p. 41; (1884), 9 App. Cas. 480).

Sureties are required whether the bond is given by a corporation or by an individual, and it would appear that the corporation and sureties should enter into the bond jointly and severally (*Barker v. North Staffordshire Rail. Co.* (1848), 2 De G. & S. 55).

When land is purchased for the purposes of the crown, sureties are not generally required. See, for example, the Post Office (Land) Act, 1881, s. 3, *post*; the Military Lands Act, 1892, s. 2, *post*.

**"Together with interest thereon."**—If the promoters enter under an invalid bond, and a valid one is afterwards executed, it would appear to be doubtful as to the date from which the interest is to be calculated (*Willey v. South Eastern Rail. Co.* (1849), 1 M. & G. 58).

If the promoters neglect to issue their warrant to summon a jury for twenty-one days, as provided by s. 68, the amount claimed can be recovered, and in an action to recover that amount, it has been held that s. 85 gives interest thereon, from the date of taking possession to the date of judgment at the rate of £5 per cent. (*In re Aberdare Rail. Co.* (1860), 8 W. R. 603).

Although the conveyance may be executed in consideration of the sum found due on inquisition, yet interest may afterwards be recovered for the period between the date when possession was taken and the date when the sum found due was paid (*In re Baltimore Extension Rail. Co., Limited. Ex parte Daly*, [1895] 1 I. R. 169).

As to interest generally, see note to s. 6, *ante*, p. 14.

**"To enter upon and use."**—As to entering, see s. 84, note, "Shall not enter," *ante*, p. 203.

If the landowner refuse to deliver up possession, the promoters can issue their warrant to the sheriff to deliver possession of the same under s. 91.

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post, p. 218, and it was held by FRY, J., in *Loosemore v. Tiverton Rail. Co.* (1882), 22 Ch. D. 25, p. 48; (1884), 9 App. Cas. 480, that where a landowner refuses to allow a company to enter upon land on which they are entitled to enter under s. 85, but does not actually resist their entry, they are justified in entering peaceably without summoning the sheriff.

They can enter under this section in order to acquire an easement or horizontal section of land, if they have power under their act to acquire that only (*Hill v. Midland Rail. Co.* (1882), 21 Ch. D. 143; *Great Western Rail. Co. v. Swindon, etc. Rail. Co.* (1884), 9 App. Cas. 787).

The power to "use," is intended to enlarge and not to limit the effect of giving possession. It enables the promoters to convert the land at once to their own use, and to use it as their own as if they had entered after payment. The landowner has, therefore, no right to resume possession, and to claim compensation for disturbance of the soil, if the works are not completed by the time limited for the execution of the works (*Tiverton Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480; *Doe d. Armistead v. North Staffordshire Rail. Co.* (1851), 16 Q. B. 526). The same principle applies in the case of entering by consent (*Doe d. Hudson v. Leeds and Bradford Rail. Co.* (1851), 16 Q. B. 796), see s. 84, note, "Except by consent," ante, p. 204.

The landowner might, however, have a right of re-entry in the event of the company becoming insolvent, and his having to enforce his vendor's lien (*Great Western Rail. Co. v. Swindon, etc. Rail. Co.* (1884), 9 App. Cas. 787, p. 810), and see note, *infra*, "Vendor's lien."

**Recovering the purchase money.—Vendor's lien.**—If after the promoters of an undertaking have entered into possession of land either by consent, or under this section, the landowner, after the price has been ascertained or agreed upon, may bring an action for specific performance, or if the conveyance has been executed for the purchase money (see notes to s. 6, ante, p. 13, and s. 36, ante, p. 68), and in addition to his remedy by sequestration or otherwise, he may enforce his lien upon the land as any ordinary vendor. With respect to his lien he is in no different position from a vendor of land to any other person (*per SELWYN, L.J., Wing v. Tottenham, etc. Rail. Co.* (1868), L. R. 3 Ch. 740, p. 745). He cannot, however, treat the promoters as trespassers, and bring an action of ejectment against them if they have properly taken possession (*Hudson v. Leeds and Bradford Rail. Co.* (1851), 16 Q. B. 796). The vendor's lien does not, however, attach where the promoters have agreed to purchase the land in consideration of an annual rentcharge. In such a case the vendor may bring an action for specific performance, and he will probably be entitled to have a receiver appointed (*Earl of Jersey v. Briton Ferry Floating Dock Co.* (1869), L. R. 7 Eq. 409, following *Winter v. Lord Anson* (1823), 1 S. & S. 434). As to a receiver, see *Eyton v. Denbigh, etc. Rail. Co.* (1868), L. R. 6 Eq. 14.

The vendor's lien will not be lost, although the parties agree that the cash payment shall be postponed, and the owner accept securities for its payment on a certain date, if, at that date, the amount due is not paid (*Pell v. Midland and South Wales Rail. Co.* (1869), 17 W. R. 506).

There is no lien upon the land in respect of the unpaid costs of an arbitration to ascertain the compensation due in respect of the land taken (*Earl Ferrers v. Stafford and Utoreter Rail. Co.* (1872), L. R. 13 Eq. 524). As to recovering such costs, see s. 34, ante, p. 63, note, "Recovery of the costs."

**To enforce the lien.**—If the vendor desire to enforce his lien, he must in a suit for specific performance, or for the purchase money, claim also for a declaration of his lien. If the action has been one for specific performance only, he cannot apply to have the lien enforced, as the enforcement must be preceded by a declaration of the lien (*Attorney-General v. Sitting-*

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*bourne and Sheerness Rail. Co.* (1866), L. R. 1 Eq. 636), and see note, *infra*, "Procedure."

If, having obtained an order for specific performance and for payment of the purchase money by a certain date, and the declaration as to his lien having been made, the vendor can, if the money is not paid by that date, apply to have the lien enforced, and the court will do so in some or all of the following ways :

1. By sale of the land.
2. By the appointment of a receiver until the sale.
3. By granting an injunction to restrain the promoters from carrying on their undertaking, and continuing in possession, and by ordering the vendor to be put in possession. See cases, *infra*, and Fry on Specific Performance, 3rd edit., p. 534.

On an application to enforce the lien, an account will be ordered to be taken of the principal, interest and costs due, and an order made that the land be sold within a certain time of the certificate, if the money is not previously paid (*Walker v. Ware, Hudham and Buntingford Rail. Co.* (1865), L. R. 1 Eq. 195; *Williams v. Great Eastern Rail. Co.* (1868), 16 W. R. 821; *Raper v. Crystal Palace and South London Rail. Co.* (1868), 16 W. R. 413; *Wing v. Tottenham Rail. Co.* (1868), L. R. 3 Ch. 740).

The sale will be ordered although a railway may have been made over the land, and although it may have been opened for public use, and in use. The fact that the company have executed a bond or deposited money under this section merely gives them possession, but does not vest the land in them, and in no way affects the landowner's rights as an unpaid vendor, nor does entry by agreement and deposit in the names of trustees in lieu of the statutory deposit. Nor are his rights affected as to the residue of the purchase money, if the money in court under this section is to be paid out to him (*Walker v. Ware, etc. Rail. Co.* (1865), L. R. 1 Eq. 195; *Wing v. Tottenham Rail. Co.* (1868), L. R. 3 Ch. 740).

Where a railway had been made and opened on land which had not been paid for, and after the vendor had obtained an order for specific performance, and declaration of his lien, the company became insolvent; on his petition, an order for sale was made, and a receiver was appointed; but an injunction restraining the company from using the land, or remaining in possession, which had been granted by JAMES, V.-C., was dissolved by the Court of Appeal on the ground that the effect thereof would be to make the land useless to both parties (*Munn v. Isle of Wight Rail. Co.* (1870), L. R. 5 Ch. 414).

Where a sale by public auction had been ordered of land over which a railway had been made and opened, and there had been no bid, a resale by auction, or privately, has been ordered, but as the vendor had elected to take an order for sale, as his remedy, the court refused to grant him a rescission of the contract, or to put him in possession until there had been a further attempt to sell (*Williams v. Aylesbury and Buckingham Rail. Co.* (1873), 28 L. T. (N.S.) 547). But in the above case, when it was afterwards shown that the land could not be sold, an order was made restraining the company from using the land, or remaining in possession, and directing that the vendor be put in possession. See Seton on Decrees, 6th ed., forms 2290—2.

If it is shown that the land is unsaleable, such an order will be made without a sale being directed, although the railway is open to public use (*Allgood v. Merybent and Darlington Rail. Co.* (1886), 33 Ch. D. 571; and see *Earl Nelson v. Salisbury and Dorset Junction Rail. Co.*, W. N. (1868) 180, where the injunction was granted in the first instance). In the case of an ordinary sale, the court has jurisdiction after declaration of a lien if the money is not paid, to order the sale to be rescinded (*Baker v. Williams* (1893), 62 L. J. Ch. 315).

Where a sale has been ordered, an injunction will not be granted restraining the company from using the land until the sale takes place (*Lyrett v. Stafford and Uttoxeter Rail. Co.* (1872), L. R. 13 Eq. 261; not following *Earl St. Germans v. Crystal Palace Rail. Co.* (1871), L. R. 11 Eq. 568).

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NOTE.

**Procedure.**—The action for declaration of lien should be brought in the Chancery Division (Judicature Act, 1873, s. 34).

**Parties.**—If the promoters have leased the line, the lessees should be made parties, as the lien cannot be enforced by giving possession, unless the parties in occupation are before the court (*Bishop of Winchester v. Mid-Hants Rail. Co.* (1867), L. R. 5 Eq. 17); so, also, ought a company who may be working the line of railway under a traffic agreement (*Marling v. Stonehouse and Nailsworth Rail. Co.* (1869), 38 L. J. Ch. 306; *Walker v. Ware, etc. Rail. Co.* (1865), L. R. 1 Eq. 195; *Earl St. Germans v. Crystal Palace Rail. Co.* (1871), L. R. 11 Eq. 568), or under parliamentary powers (*Goodford v. Stonehouse and Nailsworth Rail. Co.* (1869), 38 L. J. Ch. 307).

Similarly, subsequent incumbrancers ought to be made parties, such as debenture holders, including those who, in another suit, may have obtained a receiver (*Attorney-General v. Sittingbourne and Sheerness Rail. Co.* (1866), L. R. 1 Eq. 636; *Drax v. Somerset and Dorset Rail. Co.* (1868), 38 L. J. Ch. 232).

The declaration of lien, if made, will then be binding on these parties.

**Application to enforce lien.**—If the money is not paid the application to enforce the lien is usually made by motion (see *Lyrett v. Stafford and Uttoxeter Rail. Co.* (1872), L. R. 13 Eq. 261; *Allgood v. Merrybent and Darlington Rail. Co.* (1886), 33 Ch. D. 571); but may also be made by petition (*Williams v. Aylesbury and Buckingham Rail. Co.* (1873), 21 W. R. 819; *Ware v. Same, ib.*; *Munn v. Isle of Wight Rail. Co.* (1870), L. R. 5 Ch. 414).

Until there is a declaration of lien, the lien cannot be enforced simply on a decree for specific performance (*Attorney-General v. Sittingbourne and Sheerness Rail. Co.* (1866), L. R. 1 Eq. 636). But if all the parties have been before the court, the declaration of lien may be made on petition in the suit (*Heriot v. London, Chatham and Dover Rail. Co.* (1867), 16 L. T. (N.S.) 473), but where all the parties were not before the court it was held that a new action must be begun (*Attorney-General v. Sittingbourne, etc. Rail. Co.* (1866), L. R. 1 Eq. 636).

**Interlocutory applications.**—In an action for specific performance and declaration of lien, the court will not appoint a receiver, or grant an injunction restraining the use of the land on an interlocutory application, although the company admit their liability, except under special circumstances (*Latimer v. Aylesbury and Buckingham Rail. Co.* (1878), 9 Ch. D. 385; *Pell v. Northampton Rail. Co.* (1866), L. R. 2 Ch. 100, not following *Cosens v. Bognor Rail. Co.* (1866), L. R. 1 Ch. 594). If the company are destroying the property an interim injunction may be ordered, but not where they are using it for the purpose for which it was taken (*Pell v. Northampton Rail. Co.* (1866), L. R. 2 Ch. 100, per TURNER, L.J.).

The company, on an interlocutory application, has been ordered to bring the money into court within three months (*Bond v. Hull and Barnsley Railway and Dock Co.*, W. N. (1887) 88; and see *South Eastern Rail. Co. v. London, Brighton and South Coast Rail. Co.* (1866), 14 W. R. 666). This would appear to be the proper procedure. See *Pell v. Northampton Rail. Co.* (1866), L. R. 2 Ch. 100, per CAIRNS, L.J., p. 102.

**The order.**—See Seton on Decrees, 6th ed., 2290—2 *et seq.*

The order may allow the original vendor to bid at the sale (*Lycett v.*

**Sect. 85.** *Stafford and Uttoxeter Rail. Co.* (1872), L. R. 13 Eq. 261 ; *Ware v. Aylesbury and Buckingham Rail. Co.* (1873), 21 W. R. 819).

**NOTE.**

When land taken by a railway company is sold to enforce a vendor's lien, it is sold free from all claims of the public to use it as a highway (*Munn v. Isle of Wight Rail. Co.* (1870), L. R. 5 Ch. 414). In that case, GIFFARD, L.J., said he had no objection to adding to the direction for sale the words "free from all claims of the company, and of all persons claiming through the company."

Upon deposit  
being made  
cashier to  
give receipt.

**86.** The money so to be deposited as last aforesaid shall be paid into the bank in the name and with the privity of the Accountant-General of the Court of Chancery [*in England or the Court of Exchequer in Ireland*] (a), to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said court ; and upon such deposit being made the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money specifying therein for what purpose and to whose credit the same shall have been paid in.

(a) These words have been repealed by the Statute Law Revision Act, 1892. The Accountant-General of the Court of Chancery is now the Paymaster-General of the Supreme Court of Judicature. For the procedure on depositing, see the Supreme Court Funds Rules, 1894, set out in the notes to s. 69, *ante*, p. 134.

If the persons interested in the land are tenants in common the money ought not to be deposited in one sum to their joint account (*Langham v. Great Northern Rail. Co.* (1847), 5 Rail. Cas. 263).

The payment in will not be invalid if the title of the account includes the words "*ex parte* the promoters," if the money is paid in to the account of the landowner (*Poynder v. Great Northern Rail. Co.* (1847), 16 Sim. 3).

If payment is made into any other bank at the request of the landowner, he will suffer the loss should such bank become insolvent (*Paul v. Birmingham, etc. Rail. Co.* (1853), 11 Hare, 305).

Deposit to  
remain as a  
security, and  
to be applied  
under the  
direction of  
the court.

**87.** The money so deposited as last aforesaid shall remain in the bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned (a), and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities or government securities, and accumulated ; and upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery [*in England or the Court of Exchequer in Ireland*] (b), upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof,

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to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed it shall be lawful for the said court to order the same to be applied, in such manner as it shall think fit, for the benefit of the parties for whose security the same shall so have been deposited.

(a) Section 85. See note, "Give to such party a bond," *ante*, p. 209.

(b) These words have been repealed by the Statute Law Revision Act, 1892.

"On the application by petition."—This will now generally be done by summons. As to the procedure, and the securities in which the same may be invested, see notes to s. 70, *ante*, p. 155.

"The condition of such bond being fully performed."—The payment of costs under s. 80 or otherwise is no part of the condition of the bond, and the money will be ordered to be paid out to the promoters if the condition of the bond has been fulfilled, although there may be a question of costs between the vendor and the promoters (*Ex parte Stevens* (1848), 2 Ph. 772; *Ex parte Great Northern Rail. Co.* (1848), 16 Sim. 169; *Re Wimbledon and Dorking Railway Act* (1863), 9 L. T. (N.S.) 703). Money deposited under this section is deposited for a particular purpose, and when that purpose has been answered it is to be paid out to the promoters. "It shall be lawful," means here that it shall not be lawful to do otherwise (*In re Neath and Brecon Rail. Co.* (1874), L. R. 9 Ch. 263). The court has no power to devote it to any other purpose such as the payment of a mortgage when the value of the mortgagee's interest has not been ascertained or agreed (*Martin v. London, Chatham and Dover Rail. Co.* (1866), L. R. 1 Ch. 501). Where the price has been ascertained, but the landowner being dissatisfied and refusing to execute a conveyance, the company pay the ascertained price into court, they can obtain the payment out of the sum paid in under s. 85 (*In re Fooks* (1849), 2 Mac. & G. 357).

Where there is a doubt as to the ownership of the land, but neither claimant is absent, the promoters cannot proceed under ss. 58 and 59, and pay into court the value ascertained by a surveyor, and if they do so, they cannot have the money deposited under s. 85 paid out to them until the amount has been ascertained by a jury or arbitrators and paid into court, as the condition of the bond will not otherwise be fulfilled (*Ex parte London and South Western Rail. Co.* (1869), 38 L. J. Ch. 527).

"To be repaid."—The procedure on payment out will be found in the notes to s. 70, *ante*, p. 156, and should be made by summons if the amount is under £1,000.

Where the landowner or his representative did not oppose the application, the court has considered the fact that the bond was in possession of the promoters sufficient evidence that its conditions had been complied with, and have ordered the payment out without further evidence of their title (*Re London and North Western Rail. Co.* (1872), 26 L. T. (N.S.) 687). But where there were a number of persons interested in the land and the bond given to one only, the court refused to order repayment to the company merely on their showing that the bond was in their possession, but required further evidence that the other persons interested had been paid (*Ex parte Midland Rail Co.*, [1903] W. N. 99).

The exhibition of the landowner's receipt for the purchase money has been deemed sufficient after a number of years (*Ex parte Midland Rail. Co.*, W. N. (1894) 38).

Where there are several funds in court, they may all be paid out on one application, if this can be done without unduly complicating the petition

**Sect. 87.** (*Re Downpatrick, Dundrum and Newcastle Rail. Co.* (1870), 1. B. 4 Eq. 497 ; *Ex parte Midland Rail. Co.*, W. N. (1894) 38).

**NOTE.**

On such applications the court has power under s. 80 to order costs incurred by the landowner in connection with the taking of the land to be paid by the promoters (s. 80, Note I., "Land taken under section 85," *ante*, p. 182).

**Service and appearance.**—As to service generally in applications to court in regard to moneys deposited, see same note to s. 80, *ante*, p. 189.

On applications by the promoters for payment out under this section, it seems clear that, in the absence of special circumstances, the vendor or his representative and persons whose names are mentioned in the account should be served or made co-petitioners (*Ex parte South Wales Rail. Co.* (1850), 6 Rail. Cas. 151 ; *Ex parte London and North Western Rail. Co.*, W. N. (1887) 128).

In one case it was held that the requirements of the case would be satisfied by the production of a consent to the withdrawal, in writing under the hand of the landowner (*Re Dyson* (1882), 46 L. T. (N.S.) 730).

In another case, service on the vendor was dispensed with upon production of an affidavit that all costs of the vendor had been paid, but this case does not appear to have been followed (*Ex parte Eastern Counties Rail. Co.* (1848), 5 Rail. Cas. 210).

If the funds in court have been overlooked for a number of years the money will be paid out to the promoters without service on the landowners. If the time is over fifteen years, the official solicitor must be served, and will be entitled to his costs out of the fund (*Ex parte Lancashire and Yorkshire Rail. Co.* (1886), 55 L. T. (N.S.) 58 ; *Ex parte Midland Rail. Co.*, W. N. (1894) 38).

The service, when necessary, should be made pursuant to Order 65, r. 27 (19) (see note to s. 80, *ante*, p. 189), *i.e.*, a tender of 30s. should be made with an intimation that if the party served appears his costs will be objected to. If this is not done his costs of appearance may be allowed (*Ex parte London and South Western Rail. Co.* (1869), 38 L. J. Ch. 527 ; *cf. In re Tottenham and Hampstead Junction Rail. Co.* (1866), 14 W. R. 669). If such tender is made, costs of appearance will not be allowed if he appears merely to consent (*Ex parte London and South Western Rail. Co.*, *supra*), but if there are any special circumstances or doubt as to the condition of the bond being fulfilled, costs of appearance will be allowed (*In re Tottenham and Hampstead Junction Rail. Co.* (1866), 14 W. R. 669).

**"If such condition shall not be fully performed."**—In actions for specific performance and declaration of lien, the money is usually paid out to the landowner, either with the assent of the promoters, or without their objecting. See *Walker v. Ware* (1865), L. R. 1 Eq. 195 ; *Wing v. Tottenham Rail. Co.* (1868), L. R. 3 Ch. 740.

It has been contended that it could only be paid out either on the petition of the promoters or with their consent ; but it has been held that, if the condition of the bond is not fulfilled, the landowner may apply by petition or summons to have the money paid out to him, although the promoters object (*In re Mutlow's Estate* (1878), 10 Ch. D. 131). Mere delay on the part of the promoters to proceed with the conveyance does not appear to be a non-fulfilment of the condition (S. C.). Where a declaration of lien was asked for, the sum was ordered to be paid out and the balance paid before a certain date (*Betty v. London, Chatham and Dover Rail. Co.*, W. N. (1867) 169).

If a company execute a bond and make a deposit, but do not enter, and the intention to take the land is abandoned with the concurrence of the landowner, the company will be entitled to have the deposit paid out to them and the bond cancelled ; but if they do so without his concurrence through inability to pay or otherwise, the landowner would probably be

entitled to have his costs thereby occasioned paid to him out of the fund  
(*Ex parte Birmingham, Wolverhampton, and Dudley Rail. Co.* (1863),  
1 H. & M. 772).

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**NOTE.**

88. If at any time the company be unable, by reason of the closing of the office of the Accountant-General of the Court of Chancery [*in England or the Court of Exchequer in Ireland*] (a), to obtain his authority in respect of the payment of any sum of money so authorised to be deposited in the bank by way of security as aforesaid, it shall be lawful for the company to pay into the bank to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being addressed to [*the governor and company of*] (b) the bank in that behalf, request, and upon any such payment being made the cashier of the bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said Accountant-General's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the Accountant-General, and upon production of such direction at the Bank of England the money so previously paid in shall be placed to the credit of the said Accountant-General accordingly, and the receipt for the said payment be given to the party making the same in the usual way, for the purpose of being filed at the report office.

The company may pay the deposit money into the bank by way of security during the time that the office of the Accountant-General is closed.

(a) Repealed, Statute Law Revision Act, 1892.

(b) Repealed, Statute Law Revision Act, 1891.

89. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special Act, without such consent as aforesaid (a), or without having made such payment for the benefit of the parties interested in the lands or such deposit by way of security as aforesaid (b), the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices (c); and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid,

Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase money.

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continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior courts (d): Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall bonâ fide and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

(a) Section 84.

(b) Section 85.

(c) See definition, s. 3.

(d) Section 90.

**"Wilfully enter upon."**—These words imply an absence of honest belief on the part of the promoters that the conditions precedent have been complied with; thus, if the surveyor to value the premises be appointed by a justice who is interested as a shareholder, and the company do not know it, and the promoters enter on the amount of such surveyor's valuation being deposited, the entry is not wilful within the meaning of this section (*Steele v. Midland Rail. Co.* (1869), 21 L. T. (N.S.) 387; *Hutchinson v. Manchester, Bury, and Rossendale Rail. Co.* (1846), 15 M. & W. 314).

The penalties in this section are apparently only given to the occupier (*Armstrong v. Waterford and Limerick Rail. Co.* (1846), 10 Ir. Eq. 60, p. 64). But even if the section extends to an owner not in possession, the right to recover a penalty does not oust the jurisdiction of the court to grant an injunction if promoters wrongfully enter. (S. C.).

Decision of justices not conclusive as to the right of the promoters.

**90.** On the trial of any action for any such penalty as aforesaid the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

Proceedings in case of refusal to deliver possession of lands.

**91.** If in any case in which, according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the undertaking are authorised to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the

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promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly; and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession; and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.

**"It shall be lawful."**—These words are not words of obligation, and if the landowner refuse permission, the promoters are not bound to call upon the sheriff, but can enter if they can do so peaceably. If the entry would be forcible, the sheriff should be summoned (*per* FRY, J., in *Loosemore v. Tiverton, etc. Rail. Co.* (1882), 22 Ch. D. 25, p. 41; affirmed generally (1884), 9 App. Cas. 480). Generally as to the effect of the words "It shall be lawful," see *Julius v. Bishop of Orford* (1880), 5 App. Cas. 214.

**Costs.**—On an application by the landowner to have the amount in court paid out to him, he was ordered to pay the costs of the sheriff (*Re Turner's Estate and the Metropolitan Railway Act, 1860* (1861), 5 L. T. (N.S.) 524). The sheriff's costs of a warrant to gain possession of land incurred after payment of the purchase money into court will be ordered to be paid out of the fund in court (*In re Schmarr*, [1902] 1 Ch. 326, p. 331).

**92.** And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof. Parties not to be required to sell part of a house.

**"No party."**—This means a party able and willing to sell and convey, and includes parties under disabilities who are enabled to sell under s. 7, such as the trustees of a charity (*St. Thomas's Hospital v. Charing Cross Rail. Co.* (1861), 30 L. J. Ch. 395; *Grosvenor v. Hampstead Junction Rail. Co.* (1857), 26 L. J. Ch. 731).

The owner of a term can claim the benefit of the section; the exercise of his rights does not affect the owner of the fee who will still retain his option (*Pulling v. London, Chatham and Dover Rail. Co.* (1864), 33 L. J. Ch. 505, p. 508). And if an owner holds leasehold property which he occupies as one house with freshold property, promoters desirous of taking the freshold may be required to take the leasehold also (*Richards v. Swansea Improvement Co.* (1878), 9 Ch. D. 425). Similarly, where a house and part of a garden are held under one demise, and the remainder of the garden under another demise, neither part can be taken without the other, if the

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**NOTE.**

And the same principle applies in the case of two buildings held under separate demises, and used as one house for the purpose of business (*Siegenberg v. Metropolitan District Rail. Co.* (1883), 49 L. T. (N.S.) 554).

*Statutory provisions as to user of land taken.*—If provisions are inserted in the special Act by which the inconvenience, caused to the occupiers of houses or manufactories, by a railway being made on part of their land, will be considerably diminished, such provisions, although inserted at the instance of the landowners, will not prevent them exercising their option under this section to require the promoters to take the whole of the house or manufactory. Such provisions are not inconsistent with this section, inasmuch as the owner not being bound to require the whole of his house or manufactory to be taken would, if he did not, thereby obtain the benefit of these provisions. Thus, a proviso that a certain portion of land should be arched over to enable the owner to have access between the severed portions of his land will not exclude this section (*Sparrow v. Oxford, etc. Rail. Co.* (1852), 2 De G. M. & G. 94). Nor will a proviso as to the rate of the trains, or as to whistling, when on the land (*Governors of St. Thomas's Hospital v. Charing Cross Rail. Co.* (1861), 30 L. J. Ch. 395). In such a case if the promoters acquire the whole house or manufactory, they will in equity be liberated from the observance of the proviso (S.C., p. 401). In a case where a special Act enabled a landowner to require the whole of his land to be taken whether notice to treat was given for part or not, and he exercised his power, it was held that the sale was not a compulsory one (*Jerris v. Newcastle and Gateshead Water Co.* (1897), 13 T. L. R. 14, 312).

**"At any time."**—The time to be regarded in deciding whether premises constitute a house, building, or manufactory within this section is the time of the giving of the notice to treat. If the lands are at that date used together for a common purpose, it is immaterial apart from *mala fides* when they came to be so used (*Richards v. Swansea Improvement Co.* (1878), 9 Ch. D. 425). It is equally immaterial if changes are afterwards made (*Chambers v. London, Chatham and Dover Rail. Co.* (1863), 11 W. B. 479; and see *Treadwell v. London and South Western Rail. Co.* (1884), 54 L. J. Ch. 565). Thus, if a landowner proceed to build a house on land after receiving notice to treat for part, he cannot compel the promoters to take the whole (*Little v. Rhyl Improvement Commissioners*, W. N. (1878) 219).

Delay in requiring the whole to be taken may disentitle the landowner to an injunction. Thus, where various applications had been made to the court for injunctions, and finally an application to restrain the promoters from taking any part without taking the whole of a manufactory, the court refused the injunction because of the delay (*Barker v. North Staffordshire Rail. Co.* (1848), 2 De G. & Sm. 55; and see *Spackman v. Great Western Rail. Co.* (1855), 1 Jur. (N.S.) 790).

The words "at any time," do not extend indefinitely to all time, and a landowner who has allowed the promoters to incur expense on the supposition that they would be allowed to take part will probably be barred from asserting his rights under this section (*Gardner v. Charing Cross Rail. Co.* (1861), 2 J. & H. 248).

**"A part only."**—If promoters desire to take part of a house, the landowner cannot require them to take a larger portion. The option is to take all or none. To hold otherwise, would in some cases enable a landowner to retain what is valuable, and to throw upon companies what may be of little value (*Pulling v. London, Chatham and Dover Rail. Co.* (1864), 33 L. J. Ch. 505).

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Where a company gave notice to treat for a villa with garden, and in the same notice for a strip of the garden of the adjoining villa, and the landowner gave a counter-notice requiring the company to take the whole of both villas, and the company then elected to take neither, it was held that they could not be compelled to take the villa mentioned in the notice to treat, without the strip of the other (*Thompson v. Tottenham and Forest Gate Rail. Co.* (1892), 67 L. T. (N.S.) 416).

If the promoters desire to make a tunnel under or a bridge over a house or manufactory, or merely to acquire an easement, they will nevertheless be required to take the whole (*Sparrow v. Oxford, etc. Rail. Co.* (1852), 2 De G. M. & G. 94; and see *S. C.*, 9 Hare, 436; *Pinchin v. London and Blackwall Rail. Co.* (1854), 5 De G. M. & G. 851; *Furniss v. Midland Rail. Co.* (1868), L. R. 6 Eq. 473), unless, of course, there are special provisions to the contrary in the special Act. See, for example, *Wood v. Great Eastern Rail. Co.*, W. N. (1885) 175.

In that case the promoters were allowed to take part of certain manufactories, provided that in the opinion of the authorities assessing the compensation the part could be severed without detriment. A warrant to a jury requiring them to assess the part only without requiring them to decide as to whether severance could be made without detriment was held irregular.

A clause enabling promoters to take part of manufactories or buildings if the part can, in the opinion of the assessing authority, be severed without material detriment to the remainder, is now not uncommon in special Acts. In the case of *In re Gouty and Mauchester, Sheffield and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439, under such a clause the promoters undertook to provide access to the remainder of the property by means of a right of way over the part taken, and the umpire decided that if the company had power to give the access offered the severance could be effected without material detriment to the remainder. The Court of Appeal held that the railway company could grant the particular right of way, as the giving of it was not inconsistent with the purpose for which the land was taken, and that the umpire could take that fact into consideration in determining whether or not the severance could be made without material detriment.

In *Caledonian Rail. Co v. Turcan*, [1898] A. C. 256, the same point was raised before the arbitrator, but in his award he merely found that the portion of land could not be severed without material detriment. In an action to recover the amount awarded the railway company set up the contention that the arbitrator had been wrong in law in not taking the offer of access into consideration, but it was held that until proceedings were taken to set aside the award the court were bound by the finding of the arbitrator, and refused to decide the matter. Lord HALSBURY suggested that in future the clause might be adapted to meet such cases, and might be made more intelligible. An opinion was also expressed that *Gouty's Case*, *supra*, was not at variance with *Ayr Harbour Trustees v. Oswald* (1883), 8 App. Cas. 623, as had been suggested. See also *Allhusen v. Ealing and South Harrow Rail. Co.* (1898), 78 L. T. 285.

As to taking part of a house, see note to s. 80 of Michael Angelo Taylor's Act (57 Geo. 3, c. xxix.), in Appendix, *post*. Under the provisions of 57 Geo. 3, c. xxix., it has been held that Commissioners are entitled to take either the whole or part of a house (*Thomas v. Daw* (1866), L. R. 2 Ch. 1; and as to what is part of a house see the cases set out in the notes to that Act). Under the provisions of the Housing of the Working Classes Act, 1890, the arbitrator has power to determine that part of a house or manufactory may be taken without material damage to the whole, in which case the owner must convey the part only. See Schedule II. (12), and s. 38 (7).

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**"Of any house."**—The word "house," has been construed to have a wide signification. It means not only a house in its ordinary sense but also in the legal sense, including the house, garden, curtilage, and all that is necessary to the enjoyment of the house—all that would pass under the conveyance of a "house" (*Grosvenor v. Hampstead Junction Rail. Co.* (1857), 26 L. J. Ch. 731; *Richards v. Swansea Improvement and Tramway Co.* (1878), 9 Ch. D. 425).

It is not confined to a building used wholly or almost wholly for residential purposes, but would include business premises; a house includes a shop or may consist of a shop; it would include a large inn or anything of that kind which was built for one purpose (*Richards v. Swansea Improvement Co.* (1878), 9 Ch. D. 425).

In deciding whether premises constitute one house within this section, the structure and the use should be regarded. If the parts are enclosed in one ambit with internal communications, they may structurally be considered as one house according to its legal meaning, and if a business is carried on, and it is carried on under one management, with one course of user, that is sufficient (*S. C.*).

The following cases have been decided as to whether premises are or are not part of a "house," so that promoters could not take them without taking the whole if the owner so require:

Where the land proposed to be taken consisted of a yard, a summer-house, and part of a garden all attached to a house, and a small portion of the garden of an adjoining house both houses were required to be taken (*Cole v. West London and Crystal Palace Rail. Co.* (1859), 28 L. J. Ch. 767).

Where a house and garden were surrounded by a high wall, and a gateway opened from the garden into a paddock surrounded by an ornamental hedge, and the back road to the house was from the public road, along a road in the paddock to the gateway, the paddock was held to be part of the curtilage of the house, and a railway company wishing to take part of the paddock must take the house also (*Barnes v. Southsea Rail. Co.* (1884), 27 Ch. D. 536).

Land held with a house does not necessarily pass under the word "house," unless it is part of the curtilage and connected with the house; if it is necessary to the enjoyment of the house, and forms part of that which is necessarily held and occupied with the house, it is included in the word "house," but this is subject to some qualification as everything within the circuit of a park wall of great extent would not be included. Where the surrounding wall contained about an acre and a half of land, which was used in part for a garden and orchard, and the connection between the stables and the house was through the orchard, it was held that a railway company could not take part of the orchard without taking the house, gardens and stable (*King v. Wycombe Rail. Co.* (1860), 29 L. J. Ch. 462).

A private road or avenue leading to a mansion house is not, however, part of the house, as it would not pass on a conveyance of the house (*Allhusen v. Ealing and South Harrow Rail. Co.* (1898), 78 L. T. 285, 396).

Fields adjoining the gardens of a house, used occasionally for pleasure but usually for pasturing cows, although connected by gravel paths with the gardens, and having in the corner of one a coachman's house, are not part of the house within the meaning of this section (*Pulling v. London, Chatham and Dover Rail. Co.* (1864), 33 L. J. Ch. 505). Nor is a field which the owner of a house has bought on the other side of the road and some little distance off, for the purpose of feeding horses and cows, requisite for his establishment. "House" does not include land which is not necessary for the convenient use and occupation of the house, but only for the personal use of the owner and occupier (*Steele v. Midland Rail. Co.* (1866), L. R. 1 Ch. 275). On the same principle gardens and stables to a house acquired

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subsequently to the house, and on the opposite side of a road, were held not to be included in the word house (*Kerford v. Seacombe, etc. Rail. Co.* (1888), 57 L. J. Ch. 270). A small field or strip of land on the side of the road opposite to a house, sub-let for grazing, is not part of the curtilage, although let with the house and improving the view (*Ferguson v. London, Brighton and South Coast Rail. Co.* (1863), 11 W. R. 1088). A paddock behind a cottage and garden, and having access only from the latter, and used by the owner for his business, is part of the house (*Low v. Staines Reservoirs Joint Committee* (1900), 64 J. P. 212). Where connected with a house are a shrubbery, and a number of gardens separated by walls, but all connected by doors and gravel walks, each garden forms part of the curtilage (*Hewson v. London and South Western Rail. Co.* (1860), 8 W. R. 467).

Land belonging to trustees of almshouses and lying between these almshouses and a road, and intended at some future time to be used for erecting an additional wing to the houses, was held to be part of the curtilage of the almshouses, which were contained in one building, and it was declared that a railway company could not take this land without taking the almshouses (*Grosvenor v. Hampstead Junction Rail. Co.* (1857), 26 L. J. Ch. 731).

Where houses were in course of erection and were covered in, but upon the belief that they would be taken by a company were not completed, and the company proposed to take some of the land intended as gardens for these houses, they were required to take the whole, the unfinished buildings being held to be houses (*Alexander v. Crystal Palace Rail. Co.* (1862), 30 Beav. 556).

A vacant piece of ground between the road and a public house, not fenced either from the house or the street and used as the only means of approach for vehicles to the front door was held to be part of the curtilage of the house and could not be taken without the house (*Marson v. London, Chatham and Dover Rail. Co.* (1868), L. R. 6 Eq. 101).

A courtyard belonging to two owners and affording access to their premises is part of the house and if taken the whole must be taken (*Caledonian Rail. Co. v. Turcan*, [1898] A. C. 256).

Where attached to a dwelling-house were ornamental grounds, and within the same walls, greenhouses, and some other land in all  $2\frac{1}{2}$  acres, the greenhouses and some of the land being used for business purposes as a nursery garden, and a railway company proposed to take the greenhouses, fernery and lawn, it was held that they were taking part of the ornamental grounds which were adjuncts to the house, and must take the whole (*Salter v. Metropolitan District Rail. Co.* (1870), L. R. 9 Eq. 432).

Where a cottage in a nursery garden was taken, it was held not to be necessary to take the whole garden, the garden being considered a field, and not an adjunct to the house (*Falkner v. Somerset and Dorset Rail. Co.* (1873), L. R. 16 Eq. 458).

*Premises used for one purpose.*—Where the owner of premises used part as a dwelling-house, and the buildings behind which were connected by yards, as a candle manufactory and candle store, bread store and provision store, the whole block, being within one ambit, was held to constitute one "house" within the meaning of this section (*Richards v. Swansea Improvement Rail. Co.* (1878), 9 Ch. D. 425).

On the same principle where premises on a main street were used as a shop for furniture dealing, and in the rear and adjoining were showrooms, a warehouse and stable yard used in connection with the same business, it was held that the owner could require promoters who wished to take the warehouse and stable, to take the whole (*Siegenberg v. Metropolitan District Rail. Co.* (1883), 49 L. T. (N.S.) 554).

Where premises within one ambit, although not structurally connected, are used for one purpose, as for a hospital, the promoters can be restrained

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from taking any part without taking the whole (*Governors of St. Thomas's Hospital v. Charing Cross Rail. Co.* (1861), 30 L. J. Ch. 395).

Two villas with separate gardens, and separately leased and occupied, but forming one building and so built that the partition between the two was incomplete, and so that one could not be pulled down without rendering the other uninhabitable were, nevertheless, held to be two houses, and a railway could take one without the other (*Harrie v. South Devon Rail. Co.* (1874), 32 L. T. (N.S.) 1).

Where the owner of a leasehold house and garden had contracted for the lease of an adjoining field, on the expiration of the current lease of that field, with a view of including it in the garden, a railway company were held to be entitled to take part of the field without taking the house and garden, as the field had not at the date of the notice to treat become part of the curtilage (*Chambers v. London, Chatham and Dover Rail. Co.* (1863), 11 W. R. 479).

**"Or other building."**—The word "building" was put in to extend the provision of the section to other erections which might not fall within the description of the word "house" (*Grosvenor v. Hampstead Junction Rail. Co.* (1857), 26 L. J. Ch. 731, p. 737). There may be a building which could not be said either in the legal or ordinary sense to be a house, and that word was added to include something not necessarily included in the word "house" (*Richards v. Swansea Improvement Co.* (1878), 9 Ch. D. 455, p. 437). Incomplete houses, if covered in, are treated as houses, and not as buildings merely, but if they have fallen into ruins, they would probably be buildings (*Alexander v. Crystal Palace Rail. Co.* (1862), 30 Beav. 556).

**"Or manufactory."**—A manufactory may be a house or it may be a building, but it may also be something more. It may be more than one house, or more than one building, or it may consist of neither but only of land used for manufacturing purposes. If the main use of the premises is for manufacturing purposes, they would appear to be properly called a manufactory, although part may be used for selling purposes, and the articles manufactured be different from those sold, provided the businesses are carried on, as a whole, by one person with one body of servants, and with one capital (*Richards v. Swansea Improvement Co.* (1878), 9 Ch. D. 425, per BRETT, L.J., pp. 434—436).

Where part of a house was used as part of a manufactory and part was let and a railway company gave notice to treat for the part so let, it was held that they were bound to take the whole manufactory (*Brook v. Manchester, Sheffield and Lincolnshire Rail. Co.*, [1895] 1 Ch. 571).

If, however, the main business is not manufacturing but if incidental to the business some manufacturing is carried on, such as the making of packing cases, which is not part of the business, but merely something added to it, and if the building in which such manufacture is carried on be required to be taken, the owner cannot require the promoters to take adjoining premises on which the main business is carried on (*Benington v. Metropolitan Board of Works* (1886), 54 L. T. (N.S.) 837). Similarly, if incidental to the main business which is not manufacturing, some manufacturing is carried on, and part of the property on which the main business is carried on is taken, the promoters cannot be required to take the whole as being a manufactory. Thus, where the business was that of a dust contractor, and it was proposed to take the "tot shop," or sorting house, the promoters were not required to take other premises where some of the material was converted into manure (*Reddin v. Metropolitan Board of Works* (1862), 4 De G. F. & J. 532).

Wholesale dealers in tea, who store, blend, and mill the tea and pack it, are not manufacturers, and their business premises are not a manufactory

within this section (*Benington v. Metropolitan Board of Works* (1886), 54 L. T. (N.S.) 837). **Sect. 92.**

If the main business which is carried on is manufacturing, land within the same wall used in connection therewith, as, for example, for the deposit of rubbish and ashes, is part of the same manufactory, although no manufacturing is carried on upon that part (*Sparrow v. Oxford Rail. Co.* (1852), 2 De G. M. & G. 94). **NOTE.**

The same principle applies even if the parcels of land are separated by a road: thus where cottages on the opposite side of the road from the place where the actual manufacturing was done were used as warehouses, and were the only warehouses, they were regarded as part of the manufactory, and an injunction granted restraining the promoters from taking them without taking the whole manufactory (*Spackman v. Great Western Rail. Co.* (1855), 1 Jur. (N.S.) 790).

Where a manufactory was in part worked by water power, and had a reservoir supplied by a goit, into which water was turned out of a natural river, there being a weir, shuttles for regulating the flow of water into the goit, and a mill-house for a man to look after the shuttles, a company desiring to take the weir, shuttles, mill-house, and part of the river bed, was restrained from doing so without taking the whole manufactory (*Furniss v. Midland Rail. Co.* (1868), L. R. 6 Eq. 473).

In taking a manufactory, the promoters are required to take all the fixtures whether or not they are tenant's fixtures removable by the lessee (*Gibson v. Hammersmith Rail. Co.* (1863), 32 L. J. Ch. 337).

**Procedure.**—When a landowner receives a notice to treat for part of a house, building, or manufactory, he should, if he so desire, serve a counter-notice requiring the promoters to take the whole. It is advisable that the counter-notice be sent within twenty-one days, although this is not necessary. If the premises constitute a house, building, or other manufactory within this section, then the promoters may elect either to abandon the notice to treat, paying any damage thereby occasioned, or to take the whole (*King v. Wycombe Rail. Co.* (1860), 29 L. J. Ch. 462; *R. v. London and South Western Rail. Co.* (1848), 12 Q. B. 775, and as to what amounts to election and generally, see s. 18, note "By counter-notice," *ante*, p. 42).

If the promoters withdraw the notice to treat they can serve a second notice either for the same or part of the same land, and can again withdraw it if a second counter-notice is served (*Ashton Vale Rail. Co., Limited v. Mayor of Bristol*, [1901] 1 Ch. 591).

In some special Acts the promoters are authorised to withdraw if the assessing authority considers that the part cannot be severed without material detriment to the remainder. See reference to such a clause in *Caledonian Rail. Co. v. Turcan*, [1898] A. C. 256, p. 257.

**Form of counter-notice.**—There is no special form of counter-notice required. A verbal counter-notice followed by a suit to restrain the promoters taking part only has been held sufficient (*Binney v. Hammersmith Rail. Co.* (1863), 8 L. T. (N.S.) 161), and where after informal conversations between the solicitors to the parties as to taking the whole, the promoters proceeded to enter upon part, whereupon the landowner filed a bill to restrain them from taking the part without taking the whole, the filing of the bill was held to be sufficient notice that the landowner required them to take the whole and an injunction was granted (*Spackman v. Great Western Rail. Co.* (1855), 1 Jur. (N.S.) 790).

If a landowner, on receipt of the notice to treat, reply that he requires the promoters to pay him a certain sum for the land they propose to take, and that if they cannot accede to this that he will require them to take the whole, this will be a valid counter-notice, and they will not be entitled to

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proceed to take the part only (*Gardner v. Charing Cross Rail. Co.* (1861), 2 J. & H. 248).

The landowner is not bound to state in his notice requiring the whole premises to be taken, that they constitute a house, a building, or a manufactory, and apparently if he describes them as a "manufactory" and the court are of opinion that they constitute a house, the counter-notice will not be thereby invalid (*Richards v. Swansea Improvement Co.* (1878), 9 Ch. D. 425).

*Enforcing counter-notice.*—If the promoters disregard the counter-notice the landowner may bring an action for an injunction to restrain the company from taking proceedings to assess the amount of the compensation for part and from entering upon or taking any other proceedings for the purpose of obtaining possession of the land comprised in the notice to treat: see *Barnes v. Southsea Rail. Co.* (1884), 27 Ch. D. 536; and for a declaration that he ought not to be compelled to sell the part of his house, building, or manufactory mentioned in the notice to treat, and that he ought not to be compelled to sell any other part, *Richards v. Swansea Improvement, etc. Co.* (1878), 9 Ch. D. 425. If the promoters have entered, an injunction to restrain their further proceedings should be asked for, together with a declaration that they shall take the whole, the entrance being considered an election to take the whole (*King v. Wycombe Rail. Co.* (1860), 29 L. J. Ch. 462). An inquiry in such a case will usually be ordered as to whether the landowner can make a good title (*Sparrow v. Oxford Rail. Co.* (1852), 2 De G. M. & G. 94). See form of order, 3 Seton, 6th ed., p. 2414.

When a railway company had taken possession of part, and a declaration had been made that they were bound to take the whole if a good title could be made, and after the title had been found good they did not take possession of the whole or take any further proceedings, it was ordered, on further consideration, that they should take all necessary steps to assess the value and that they should pay the money within one month after the value had been assessed, and that a conveyance be executed. The order contained a declaration of the landowner's lien, with liberty to apply to enforce that lien. JAMES, V.-C., said he would grant a mandatory injunction if the company persevered in their resistance (*Marson v. London, Chatham and Dover Rail. Co.* (1869), L. R. 7 Eq. 546; and see form of order, p. 549, which was followed in *Falkner v. Somerset and Dorset Rail. Co.* (1873), L. R. 16 Eq. 458).

If the counter-notice is invalid by reason of the premises not forming a house or manufactory, the promoters will be entitled to proceed on their original notice to treat and to disregard the counter-notice (*Loosemore v. Tiverton, etc. Rail. Co.* (1882), 22 Ch. D. 25; (1884), 9 App. Cas. 480; *Harrie v. South Devon Rail. Co.* (1874), 32 L. T. (N.S.) 1).

In a case where the solicitors of a company accepted a counter-notice as valid, but before the premises had been assessed they discovered that the premises did not constitute one house, and the court agreed with them, it was held that the acceptance by the solicitors did not bind the company (*Treadwell v. London and South Western Rail. Co.* (1884), 54 L. J. Ch. 565).

And with respect to small portions of intersected land, be it enacted as follows (a):

(a) Sections 93, 94.

Owners of intersected lands may insist on sale.

**93.** If any lands, not being situate in a town or built upon, shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than

half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

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**"Not being situate in a town or built upon."**—As to buildings, see s. 92, *ante*, p. 224.

As to what is meant by "situate in a town," see note to s. 128, *post*.

A market garden with a cottage on it is not land built upon, and if the cottage is taken the garden need not be taken, but if the garden is severed, the severed portion, if less than half an acre, must be taken if required (*Falkner v. Somerset and Dorset Rail. Co.* (1873), L. R. 16 Eq. 458).

**"Shall purchase the same."**—If the value of this additional land is to be assessed with the land taken, care must be exercised by both parties that it is included in the submission or warrant to the sheriff, otherwise the assessment may be void (*North Staffordshire Rail. Co. v. Wood* (1848), 2 Ex. 244).

**94.** If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special Act, or any Act incorporated therewith, compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land; and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication.

Promoters of the undertaking may insist on purchase where expense of bridges, etc., exceeds the value.

**Sect. 94.****NOTE.**

**"If any such land."**—The House of Lords, after taking the opinion of the judges, have decided that the word "such" in this section does not refer to "lands not being situate in a town or built upon," mentioned in s. 93, but to the heading of these two sections—"small portions of intersected land." Promoters of an undertaking may, therefore, take advantage of this section when the intersected land is within a town or built upon, and compel the sale of the severed land if less than half an acre, or of less value than the expense of making the necessary communications (*Eastern Counties, etc. Rail. Co. v. Marriage* (1860), 9 H. L. Cas. 32; and see *Falls v. Belfast and Ballymena Rail. Co.* (1849), 12 Ir. L. R. 233, to same effect).

**"A bridge, culvert, or other such communication."**—In the case of railway companies this section should be read with s. 68 of the Railways Clauses Act, 1845, which requires them to provide accommodation works for making good any interruptions caused by the railway to the use of the land. In an Irish case it was held, where part of land was taken, from which an owner had access to the sea for bathing, fishing and shooting, the land being severed and the access from the residence on the land to the sea being cut off, that the company were bound to make the accommodation works under s. 68 of that Act and could not exercise their power of buying the lands under this section, as the works were not merely to connect the severed lands, but to make good the interruption to the use of the land (*Falls v. Belfast, etc. Rail. Co.* (1849), 12 Ir. L. R. 223).

**"As herein provided for cases of disputed compensation."**—See these provisions summarised in the notes to s. 21, *ante*, p. 46. The methods provided are by justices (ss. 22—24), arbitrators (ss. 25—37), jury (ss. 38—57), surveyors (ss. 59—63).

*Costs of the inquiry.*—Although this section directs that the inquiry as to value shall be ascertained as herein provided for cases of disputed compensation, it does not make any provisions as to costs and does not thereby include ss. 34 or 51. Costs cannot be given unless an intention is clearly implied, and as no previous offer by the promoters would save an inquiry, the provisions of ss. 34 and 51 cannot be deemed to be implied as they give the landowner costs only when the sum awarded exceeds the amount offered. If, therefore, the promoters make no offer the landowner is not entitled to costs (*Cobb v. Mid-Wales Rail. Co.* (1866), L. R. 1 Q. B. 342).

As to the power of the arbitrator to award costs, see the Arbitration Act, 1889, s. 2, Sched. I. (i), *post*.

And with respect to copyhold lands, be it enacted as follows (a) :

(a) Sections 95—98.

Conveyance  
of copyhold  
lands to be  
enrolled.

**95.** Every conveyance to the promoters of the undertaking of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel; and on payment to the steward of such manor of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof he shall make such enrolment; and every such conveyance, when so enrolled, shall have the like effect, in respect of such copyhold or customary lands, as if the same had been of freehold tenure, nevertheless, until such lands shall have been enfranchised by virtue of

the powers hereinafter contained (a), they shall continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed.

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(a) See ss. 96 and 97.

**"Shall be entered on the rolls."**—If a tenant convey his copyhold lands to a company under their special Act, he will convey no more than he has, so that the lord's rights are in no way affected; therefore, if the conveyance is not enrolled, the lord will be entitled to seize the land on the death of the tenant. Until enrolment, the tenant and his heir hold the land as trustees for the company (*Dimes v. Grand Junction Canal Co.* (1846), 9 Q. B. 469, and S.C. in Chancery (1838), 2 Jur. 886 and 1077).

Where the manor had been leased by the lord and the company purchased from the lessee, the reversioners were allowed to eject the company, but reasonable compensation was assessed by the court (*Beaufort v. Patrick* (1853), 17 Beav. 60, a case under a special Act).

**"Such fees as would be due to him on the surrender."**—The steward is only entitled to the fee on the surrender, and, although by the custom of the manor he may be entitled to a fee on admittance by a tenant, he will not be entitled to it under this Act (*Cooper v. Norfolk Rail. Co.* (1849), 3 Ex. 546).

**"They shall continue subject to the same fines."**—By s. 96, the promoters who take copyhold land are required to enfranchise within three months after enrolment or within one month of entry, but if there is any delay in so doing, then the lord of the manor is entitled to the fines, rents, heriots, and services as if the company had not done so, and these fines are to be assessed according to the improved annual value of the land, although the compensation is assessable on the unimproved value (*Louther v. Caledonian Rail. Co.*, [1892] 1 Ch. 73, and see note to next section).

It is not intended, however, that where the promoters enrol the conveyance that they should have to pay the customary fine for admittance to copyholds to the lord (*Ecclesiastical Commissioners v. London and South Western Rail. Co.* (1854), 14 C. B. 743).

**96.** Within three months after the enrolment of the conveyance of any such copyhold or customary lands (a), or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works (b), whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement the same shall be determined as in other cases of

Copyhold  
lands to be  
enfranchised.

**Sect. 96**

disputed compensation (c); and in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

(a) That is the enrolment under s. 95.

(b) That is under s. 85, *ante*, p. 205.

(c) See these set out in note to s. 21, *ante*, p. 46.

The construction of ss. 95—97 was fully discussed in *Louther v. Caledonian Rail. Co.*, [1892] 1 Ch. 73, by the Court of Appeal. The effect of s. 96 is to cast a duty upon promoters to procure enfranchisement, and on the lord to enfranchise, upon the happening of the first of the events mentioned in the section, and either party can enforce the duty against the other. If the promoters do not proceed the landowner can obtain a *mandamus* to compel them. The rights of the parties are settled from the date when the first of the two events occurs, and that is the period at which the value of the lord's interest in the land ought to be taken. Therefore, if there is delay in assessing the compensation payable to the landlord, it must be assessed as at the date of the happening of the first of the two events, and without regard to the subsequent improvements made by the promoters. The loss "by the enfranchisement of the same" mentioned in this section means the loss by the creation of the right to enfranchisement on the one side and of the obligation to enfranchise on the other. The provision that within three months of enrolment or one month of entry the promoters shall procure enfranchisement means that they shall take all proper steps to procure the enfranchisement, as provided by this and the next section. *JESSEL, M.R.*, had laid down the same principle in *In re Marquis of Salisbury*, December, 1879. See report thereof in note to above case [1892] 1 Ch. p. 75, and *W. N.* (1879) 214. The fines in the meantime are payable on the improved value. See s. 95.

In determining the compensation for the loss caused "by the enfranchisement," the amount of a fine for the surrender and admittance of the promoters is not to be included (*Ecclesiastical Commissioners v. London and South Western Rail. Co.* (1854), 14 C. B. 743). And if such a fine is paid to a tenant for life it is to be treated as capital money (*Re Wilson's Estate* (1862), 2 J. & H. 619).

Promoters under this Act are not affected by the Copyhold Acts allowing compulsory enfranchisement; their position is wholly distinct from that of a copyholder (*Re Wilson's Estate* (1862), 2 J. & H. 619; *In re Marquis of Salisbury*, *W. N.* (1879) 214).

Landowners and tenants for life under s. 4 of the Settled Land Act may, no doubt, agree with the promoters to enfranchise pursuant to the Copyhold Act, 1894, if such an agreement be desirable, as the compensation is only to be assessed under this Act if the parties do not agree (*cf. In re Marquis of Salisbury*, *W. N.* (1879) 214). For the method of determining the compensation for enfranchisement in such a case, see ss. 5—10 of the Copyhold Act, 1894 (57 & 58 Vict. c. 46), which repeals and consolidates the previous Copyhold Acts.

Lord of the manor to enfranchise on payment of compensation.

**97.** Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, the lord of the

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manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common soccage ; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common soccage.

*Deposit in the bank.*—See ss. 69, 71, 73, *ante*, pp. 131, 163 and 164 for the case of persons under disability ; s. 76 on failure to convey or make a good title, *ante*, p. 171.

**"Shall enfranchise such lands."**—This means presumably that a deed of enfranchisement is to be executed by the lord, and not till then, unless the promoters execute a deed poll, are the lands completely enfranchised (*Lovther v. Caledonian Rail. Co.*, [1892] 1 Ch. 73, 81).

In such a deed the lord is apparently not bound in strictness to give any acknowledgment as to the right of the promoters to the production of the title deeds and of the court rolls ; but, at the most, the promoters are not entitled to more than an acknowledgment by the lord and his trustee of their right to the production of such title deeds and of the court rolls as affect the land enfranchised, and to the delivery of copies and an undertaking by the lord alone for safe custody (*In re Agg-Gardner* (1884), 25 Ch. D. 600).

**"To execute a deed poll."**—As to this, see s. 75, *ante*, p. 170.

**98.** If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices ; and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special Act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held ; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents ; and with reference to any such apportioned rents, the lord of the manor shall have all

Apportion-  
ment of copy-  
hold rents.

**Sect. 98.** the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

*By two justices.*—See the definition and note to s. 3, *ante*, p. 7.

See also s. 24 which provides for procedure in cases of disputed compensation, which, apparently, does not include questions of apportionment, *ante*, p. 52.

And with respect to any such lands being common or waste lands, be it enacted as follows : (a)

(a) Sections 99—107.

Compensation for common lands, where held of a manor, etc., how to be paid.

**99.** The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil ; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners ; and upon payment or deposit in the bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

Section 100 deals with the procedure to acquire the lord's rights. Sections 101—107 deal with the ascertaining the compensation payable to the commoners and the means of acquiring their rights.

An allotment of part of the waste to trustees for the purpose of allowing certain occupiers to cut turves does not necessarily take away the lord's right in the soil (*Attorney-General v. Meyrick*, [1893] 1 A. C. 1) ; but such an allotment when made in pursuance of ss. 34 and 73 of the Inclosure Act, 1845, vests the land in the trustees (*Simcoe v. Pethick*, [1898] 2 Q. B. 555). See, further, the note to s. 104, *post*, p. 235.

Lord of the manor, etc., to convey to the promoters of the undertaking on receiving compensation for his interest.

**100.** Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey (a) such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking, in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance, and in default of such conveyance

it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, (b) duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject, nevertheless, to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided (c). Sect. 100.

As to ascertaining the compensation payable to the lord, the general law hereinbefore provided is to be followed.

(a) Sections 81—83.

(b) Section 75.

(c) Sections 104—107.

**"Subject nevertheless to the commonable and other rights."**—A company taking the wastes of a manor with rights of common over the waste, in order to get full and entire property and possession, must settle not only with the lord as owner of the soil, but with the commoners, who have rights of common over the wastes. Until they have settled with the commoners as well as the lord, or taken steps under s. 107 by paying the deposit into the bank, they cannot take possession. Therefore, if a railway company, after obtaining a conveyance from the lord, enter and construct their railway on the common without first having paid compensation to the commoners, a commoner may maintain an action for the disturbance of his right. On the conveyance from the landlord the company stand in the place of the lord, and the payment of the valuation either to the commoners or into the bank is a condition precedent to their right to disturb the commoners (*Stoneham v. London, Brighton and South Coast Rail. Co.* (1871), L. R. 7 Q. B. 1).

**101.** The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

Compensation for common lands where not held of a manor how to be ascertained.

**"Shall be determined by agreement."**—This must be subject to s. 105, which provides that in the event of disagreement, disputes shall be settled as in other cases of disputed compensation.

This section deals with two possible cases of ownership of the soil other than that of the lord: one in which a person, not being lord of the manor, stills holds land subject to a commonable right, the other where the soil

**Sect. 101.** would be subject to the commoners (*Nash v. Coombs* (1868), L. R. 6 Eq. 51, p. 56).

**NOTE.**

This section and the following are not imperative, so as to exclude agreements entered into otherwise than as mentioned in these sections. Thus, where the householders of a borough owned land in common, and at a meeting appointed their chairman to negotiate with the company, the agreement entered into by him was held valid, and specific performance decreed (*Bee v. Stafford and Uttoxeter Rail. Co.* (1875), 23 W. R. 868).

If the persons desiring to acquire a common for the purpose of some undertaking, have not been specially authorised by their special Act to do so, the grant to them will be invalid without the consent of the Board of Agriculture. See the Commons Act, 1899 (62 & 63 Vict. c. 30), s. 22 and Sched. I.

A meeting of the parties interested to be convened.

**102.** It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

It will be noticed that there is no provision for determining at this stage who are the persons entitled to attend the meeting as having commonable rights, and probably all persons claiming to have such rights can attend. See matter discussed in *Richards v. De Winton*, *Richards v. Erans*, [1901] 2 Ch. 566; on appeal, [1903] 1 Ch. 507.

Meeting to appoint a committee.

**103.** It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Committee to agree with the promoters of the undertaking.

**104.** It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights, and all matters relating thereto, for and on

Sect. 104.  

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behalf of themselves and all other parties interested therein ; and all such parties shall be bound by such agreement ; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation, shall be an effectual discharge for the same ; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests, but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or non-application thereof.

**"To enter into an agreement."**—An action will lie at the instance of the committee for the specific performance of such an agreement. In *Evans v. Merthyr Tydfil Urban District Council*, [1898] 1 Ch. 241, an issue was ordered to be tried in such an action as to whether the land in fact was subject to any commonable rights, and it was there held that, on the trial of such an issue, evidence of reputation was admissible.

**"Shall be apportioned by the committee."**—By the Inclosure Acts, 1852 and 1854, the power of apportioning and otherwise dealing with such money are conferred on this committee and upon the Inclosure Commissioners, now the Board of Agriculture. As these powers have not been found in practice to be sufficient, further powers of applying the money have been conferred by the Commonable Rights Compensation Act, 1882. Such parts of these Acts as are relevant to this subject will be found set out in full hereafter.

It was held by KEKEWICH, J., that if the committee act properly according to the provisions in these Acts, the court has no jurisdiction to intervene at the instance of one of the commoners. Thus, an action brought by one commoner claiming the whole of the money paid as being the sole commoner, was dismissed for want of jurisdiction, inasmuch as the above section and ss. 15 and 17 of the Inclosure Act, 1854, provided proper machinery for determining who were the parties entitled (*Richards v. De Winton, Richards v. Evans*, [1901] 2 Ch. 566). On appeal the parties agreed to refer to an arbitrator the ascertainment of the parties entitled as commoners and their interests. The arbitrator found that all owners of freehold farms within the parish to the number of seventeen were entitled to common of pasture, and on this finding the court dismissed the appeal without deciding the question of jurisdiction. [1903] 1 Ch. 507.

**"The several persons interested."**—The committee may go to court to have the matter settled as to the manner in which the money is to be divided.

In one case, where there were byelaws regulating the number of cattle which the freeholders and copyholders and the occupiers of freehold and copyhold land might respectively turn on to the common, the court ordered the money to be divided between the freeholders and copyholders in shares, according to the byelaws (*Fox v. Amhurst* (1875), L. R. 20 Eq. 403).

The occupiers who were not represented in that suit brought an action to obtain their share, but it was held that they had no right of common independently of their landlords, and, therefore, had no claim on the fund (*Austin v. Amhurst* (1877), 7 Ch. D. 689).

Where resident freemen of a borough had the right annually of turning one head of stock on to lands, held by the corporation as trustees, and could transfer this right as long as they resided, it was held that they were not

**Sect. 104.****NOTE.**

entitled to the money paid for the fee although they claimed to be the only persons interested, inasmuch as the land was held in trust for the resident freemen of all time; the court made an order declaring that the money ought to be reinvested in lands to be held on the same trusts as those taken were held, and in the meantime ordering the money to be invested and the dividends paid to the trustees, to be divided by them amongst such resident freemen at the same time or times as such freemen have been accustomed in each year to enter upon the enjoyment of their rights of common (*Nash v. Coombs* (1868), L. R. 6 Eq. 51).

Where land had been allotted under statute unto the lord of the manor in trust for the occupiers of cottages for supplying turves for fuel for the use of such cottages, other parts being allotted to owners in severalty in compensation for their rights, and a railway company took part of the land allotted for the occupiers of the cottages, it was held that the freeholders of the cottages had no claim upon the purchase money, but that the lord of the manor had an interest in the soil, and that he was entitled to such part of the money as represented the value of the soil, and that the remainder was to be held as a charitable trust for the benefit of the occupiers of the cottages (*In re Christchurch Inclosure Act* (1888), 38 Ch. D. 520, affirmed as regards the lord having an interest in the soil in *Attorney-General v. Meyrick*, [1893] A. C. 1; the other points not being appealed). This case was distinguished in *Simcoe v. Pethick*, [1898] 2 Q. B. 555, where it was held that in the case of an allotment to trustees under the Inclosure Act, 1845, for the purpose of allowing the occupiers of certain cottages to get turf, that the legal estate vested in the trustees and not in the lord of the manor.

On an inquiry as to the apportionment of a fund between the corporation of a borough and the freemen, on the application of the corporation, the court refused to proceed until the freemen were represented at the hearing (*Ex parte Mayor of Lincoln* (1852), 21 L. J. Ch. 621).

If an inquiry is ordered and a number of commoners claim, each person whose claim is allowed will be allowed three guineas costs for proving the same, although the amounts received by them are very small (*Waterton v. Burt* (1870), 39 L. J. Ch. 425, citing *March v. Alexander*, June, 1861; *cor. Wood, V.-C.*, not reported, and to same effect).

In *Weatherley v. Layton* (1892), W. N. 165, an action by a member of the committee against the other members to have the sum divided under the direction of the court, an order was made for inquiry as to the persons entitled and their proper shares. Claimants were admitted in respect of 144 tenements, but it was reported that an inquiry as to the shares would exhaust the sum, and that the sum should be divided equally between the 144 claimants, and this the court sanctioned.

Disputes to  
be settled as  
in other  
cases.

**105.** If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

*As in other cases.*—I.e., by justices, s. 22; by arbitration, ss. 23, 25—34; by jury, ss. 35—57.

If no com-  
mittee be  
appointed,  
the amount  
to be deter-  
mined by a  
surveyor.

**106.** If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such

compensation shall be determined by a surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found. **Sect. 106.**

"Parties who cannot be found."—See ss. 59—63, *ante*, pp. 94—96. It is not clear whether, if an effectual meeting is afterwards convened, the amount can be referred to arbitration pursuant to ss. 64—67, *ante*, pp. 109, 110, if the committee are dissatisfied with the amount assessed by the surveyor.

**107.** Upon payment or tender to such committee, or any three of them, or if there shall be no such committee then upon deposit in the bank (a) in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided (a) in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery [*in England or the Court of Exchequer in Ireland*], (b) by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit.

Upon payment of compensation payable to commoners the lands to vest.

(a) Sections 69, 75, 106.

(b) These words are repealed by the Statute Law Revision Act, 1892.

**Made upon petition.**—The order will now in cases where the amount is under £1,000 be made upon summons. See Order 55, r. 2; and see the procedure fully discussed in the notes to s. 70, *ante*, p. 152.

**"For the benefit of the parties interested."**—That means according to their several rights and respective interests in having an investment of it, the court dealing with it in that way (*per* PAGE-WOOD, V.-C., in *Nash v. Coombes* (1868), L. R. 6 Eq. 51, p. 58).

As to the different interests, see note to s. 104, *ante*, p. 235.

And with respect to lands subject to mortgage, be it enacted as follows (a) :

(a) Sections 108—114.

**108.** It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such Power to redeem mortgages.

**Sect. 108.**

lands which may be required for the purposes of the special Act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special Act ; and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct ; or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice ; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

The above section must be read subject to the proviso contained in s. 114, that the mortgagee is entitled to compensation and costs of reinvestment if the payment is made before the time limited for payment off.

**"To purchase the interest of the mortgagee."**—The promoters may deal with the mortgagor and arrange with him to settle with the mortgagees, but if they know there is a mortgage and neglect communications with the mortgagees, they may be restrained from proceeding with their works until the value of the mortgagees' interest had been ascertained and paid or secured (*Ranken v. East and West India Docks* (1849), 12 Beav. 298 ; and see *Martin v. London, Chatham and Dover Rail. Co.* (1866), L. R. 1 Ch. 501). Under the agreement with the mortgagor they may take possession but they may not commit waste until the mortgage has been discharged, and if the mortgagor has agreed to settle with the mortgagee he must pay six months' interest as provided by this section (*Spencer-Bell v. London and South Western Rail. Co.* (1885), 33 W. R. 771).

**"Shall convey."**—As to the forms and costs of conveyances, see ss. 81—83, *ante*, pp. 199—202.

**109.** If, in either of the cases aforesaid, upon such payment or tender any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank, in the manner provided by this Act in like cases (a), the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due ; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them ; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

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Deposit of mortgage money on refusal to accept.

(a) See ss. 69, 75—77, and notes thereto.

**110.** If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part ; and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation ; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee, in satisfaction of his mortgage debt, so far as the same will extend ; and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Sum to be paid when mortgage exceeds the value of the lands.

"The same shall be determined as in other cases."—If the procedure laid down in ss. 108, 109 is not followed, the mortgagees are entitled to a notice to treat under s. 18 as parties interested : *per* CRANWORTH, L.C., in *Martin v. London, Chatham and Dover Rail. Co.* (1866), L. R. 1 Ch. 501, pp. 505, 506 ; *R. v. Metropolitan Rail. Co.* (1865), 13 L. T. (N.S.) 444, *per* BLACKBURN, J.

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In the former of these cases the company had entered and had given bonds, pursuant to s. 85, to the mortgagor and mortgagee. Proceedings were then taken to have the whole value of the property ascertained by an inquiry, but as it was expected that the amount assessed would exceed the value of the mortgage debt, the mortgagees were not served with any notice, and were no parties to the inquiry. The amount assessed was less than the mortgage debt. The mortgagees claimed to have their debt and costs paid out of the money in court under s. 85, and also an injunction to have the company restrained from proceeding with their works until their purchase money should be assessed and paid, and that it might be ascertained pursuant to the Lands Clauses Act. It was held (1) that the mortgagees although they had notice of the inquiry were not bound by it; (2) that they had no lien on the money in court under s. 85, as until a jury was summoned and the amount ascertained that sum was not available; (3) that they could not claim on the amount assessed. As the premises had been destroyed by the company there was a difficulty in having the value assessed under s. 68, and the mortgagees were not bound to proceed thereunder. They were dealt with as if the company had purchased the equity of redemption and had the plaintiffs as their mortgagees. The usual account was, therefore, ordered to be taken, and upon the company paying the amount found due they were to have conveyed to them the mortgagee's interest, but in default the company, and if necessary the mortgagor, were ordered to execute an assignment of the property mortgaged to the mortgagee.

If the mortgagee is in possession, he will be entitled to all sums found due in respect of loss of profits and goodwill, and if he is not in possession he will be entitled to the value of the goodwill attaching to the premises (*Pile v. Pile, Ex parte Lambton* (1876), 3 Ch. D. 36; *cf. Chissum v. Deves* (1828), 5 Russ. 29; *Truman v. Redgrave* (1881), 18 Ch. D. 547).

If the mortgagor is in possession sums awarded for damage to trade and personal expenses belong to the mortgagor and not to the mortgagee (*Cooper v. Metropolitan Board of Works* (1883), 25 Ch. D. 472; *Martin v. London, Chatham, and Dover Rail. Co.* (1866), L. R. 1 Ch. 501; and see *In re South City Market Co., Ex parte Bergin* (1884), 13 L. R. Ir. 245, where the money was apportioned between the tenant for life, a reversioner and a mortgagee of the reversion).

Deposit of  
money when  
refused on  
tender.

**111.** If upon such payment or tender as aforesaid being made any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided by this Act in like cases (a). and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all moneys due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them (b); and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession

thereof in case such mortgagee were himself entitled to such possession ; nevertheless all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit. **Sect. 111.**

(a) Section 69.

(b) Sections 75, 76, and 77.

**112.** If a part only of any such mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other ; and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation (a) ; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend ; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid ; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee ; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed. Sum to be paid where part only of mortgaged lands taken.

(a) As to the methods of settling compensation, see s. 21, note, *ante*, p. 46.

**113.** If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the Deposit of money when refused on tender.

**Sect. 113.** satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank, in the manner provided by this Act in the case of moneys required to be deposited in such bank (a) ; and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon ; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them ; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof ; nevertheless every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

(a) See s. 69, 75—77.

If the value of the land is paid into court to the account of the tenant for life, and the mortgagees are not paid off, the promoters cannot treat that money as money in court under this section, and may be ordered to pay the costs of the attendance of the mortgagees on an application for reinvestment, and the promoters cannot then insist on having these incumbrances paid off (*Ex parte Peyton's Settlement* (1856), 4 W. R. 380).

Compensation to be made in certain cases if mortgage paid off before the stipulated time.

**114.** Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sale which shall have been so paid off, or such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the reinvestment of the sum so paid off, such costs in case of difference to be taxed, and payment thereof enforced in the manner herein provided with respect to the costs of conveyances ; and if the rate of interest secured by such mortgage be higher than at the

time of the same being so paid off can reasonably be expected to be obtained on reinvesting the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained. Sect. 114.

**"A time shall have been limited."**—In such a case it is not enough for the promoters to pay the whole value of the premises into court. Even if the mortgagees are not entitled to possession, they are entitled to have their security maintained, and the court will prevent the company from prosecuting their works until the mortgagees' interest under this section has been ascertained and paid or secured (*Ranken v. East and West India Dock* (1849), 12 Beav. 298).

And with respect to lands charged with any rent-service, rent-charge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for, be it enacted as follows: (a)

(a) Sections 115—118.

**115.** If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same shall be determined as in other cases of disputed compensation (a). Release of  
lands from  
rentcharges.

(a) See s. 21, note, *ante*, p. 46.

Where the promoters agreed with the committee of a lunatic to purchase a rentcharge for the period of the lunatic's life on houses, which they proposed to take, and the consideration was the purchase of a government annuity of like amount for his life, the court sanctioned the agreement (*In re Brewer* (1875), 1 Ch. D. 409).

As to tithe rentcharges, see note to s. 68, *ante*, p. 128.

If land is sold for a yearly rent under s. 11 of this Act it will be properly described as a rentcharge. See *In re Lord Gerard and Beecham's Contract*, [1894] 3 Ch. 295.

**116.** If part only of the lands charged with any such rent-service, rentcharge, chief or other rent, payment, or incumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement Release of  
part of lands  
from charge.

**Sect. 116.** between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices ; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

*Two justices.*—See definition, s. 3, *ante*, p. 8.

Deposit in  
case of  
refusal to  
release.

**117.** Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge ; and if he fail so to do, or if he fail to adduce good title to such charge, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the bank, in the manner hereinbefore provided in like cases, (a) and also, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent-service, rentcharge, chief or other rent, payment or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

(a) Sections 69, 75—77.

Charge to  
continue on  
lands not  
taken.

**118.** If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge ; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be released

from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

**Sect. 118.**

And with respect to lands subject to leases, be it enacted as follows (a):

(a) Sections 119—122. And see also s. 74. The sections under this heading are intended to provide altogether for compensation in the cases specially provided for, being specific provisions not affected by the other sections (*Syers v. Metropolitan Board of Works* (1877), 36 L. T. (N.S.) 277). Special Acts excepting such parts of the Lands Clauses Consolidation Act, as relate to the purchase and taking of lands otherwise than by agreement do not thereby except these sections (*R. v. Mayor of London* (1867), L. R. 2 Q. B. 292; *Wilkins v. Mayor of Birmingham* (1883), 25 Ch. D. 78).

**119.** If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease.

Where part only of lands under lease taken, the rent to be apportioned.

“The rent . . . shall be apportioned.”—This is not within the power of the arbitrator who assesses the compensation; it must be effected under the provisions of this section (*In re Ware* (1854), 7 Rail. Cas. 780).

If the promoters agree to purchase the lessee's right and to have the rents

**Sect. 119****NOTE.**

apportioned if necessary under the Act, specific performance of the agreement will be decreed against the promoters, but it does not appear necessary that the lessor should be served with a notice to treat for his interest, before the apportionment can be made (*Williams v. East London Rail. Co.* (1869), 18 W. R. 159).

The lessee has no power to compel the lessor to apportion the rent. The promoters are the persons enabled to call upon the lessor and lessee to come before the justices in order that they may be bound with respect to the amount of the apportionment. It is, therefore, no answer to a suit for specific performance of an agreement brought by the lessee to compel the promoters to purchase his land, that the apportionment of the rent had not been agreed upon (*Slipper v. Tottenham, etc. Rail. Co.* (1867), L. R. 4 Eq. 112).

The costs of having the rent apportioned by justices or otherwise are costs incidental to the taking and purchase of land under s. 80, and are payable by the promoters, at least if the money has been paid into court (*Ex parte Flower* (1866), L. R. 1 Ch. 599); but are not costs payable under s. 82 (*Ex parte Buck* (1863), 33 L. J. Ch. 79).

The date when the apportioned rent becomes payable by the tenant would appear to be the date of the apportionment, although the premises are not taken for some time afterwards (*Bull v. Graves* (1886), 18 L. R. Ir. 224, a decision on the Railways (Ireland) Act, 1860).

**"The lessor shall have all the same rights."**—He has, however, it would appear, no lien on the money paid to the tenant as compensation, either for arrears of rent accrued due before the land was taken, or since (*Ex parte Carey* (1847), 10 L. T. (o.s.) 37, an Irish case).

Tenants to be compensated.

**120.** Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required or otherwise by reason of the execution of the works.

For the principles of compensation as to severance, see notes to s. 63, *ante*, p. 96.

Compensation to be made to tenants at will, etc.

**121.** If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person

appointed by them to take possession thereof, any such lands in Sect. 121.  
their possession required for the purposes of the special Act.

**"Any such lands."**—These are the lands subject to leases referred to in the heading to these sections. See note thereto, *ante*, p. 245.

**"No greater interest therein than as tenant for a year."**—This is meant to comprehend every species of interest for less than a year in duration. It, therefore, includes the interest of a tenant in possession under a longer term than for a year if at the time when possession of the land is required the residue of the term has less than a year to run. Tenants in such a position ought not to require the compensation to be settled by arbitration under s. 68, but by justices under this section (*R. v. Great Northern Rail. Co.* (1876), 2 Q. B. D. 151).

A schoolmaster in possession of a school-house, who could be removed by two-thirds of the governors giving three months' notice, has an interest in the house not greater than as tenant for a year or from year to year (*R. v. Manchester, Sheffield, etc. Rail. Co.* (1854), 4 E. & B. 88).

A person in possession under a written agreement for more than three years, being a lessee in equity for that term, cannot be treated as a yearly tenant under this section (*Sweetman v. Metropolitan Rail. Co.* (1864), 1 H. & M. 543).

The interest of partners in the business premises occupied by the firm, although the lease may have been granted to one partner only, is apparently an interest greater than that of tenants from year to year, although there may be no stipulations as to the term of such occupation. They are joint occupiers as long as the partnership continues (*R. v. East London Rail. Co., Ex parte Barnes* (1867), 17 L. T. (N.S.) 291).

**Date for determining tenant's interest.**—If no notice to treat has been given and the promoters enter, the proper date for ascertaining the rights of the parties is the date of entry (*R. v. Great Northern Rail. Co.* (1876), 2 Q. B. D. 151 : *per* LUSH, J., p. 155).

If, by the special Act, a six months' notice in writing is required to be given by promoters of their intention to take land, the date of the delivery of such notice is the date to be considered in determining whether a tenant has a greater interest than as tenant for a year or from year to year (*Tyson v. Mayor of London* (1871), L. R. 7 C. P. 18).

Apart from the provisions of the special Act, as far as s. 121 is concerned, the estate or interest of the party seeking compensation must be regarded at the time of giving the notice to take (*S. C., per* WILLES, J., p. 23).

If the promoters enter under s. 85, the date of such entry would be the date of determining the tenant's interest, and it has been held that if a notice to treat has been given some time previously under which nothing has been done, and in the interval between serving such notice and taking possession the tenant's interest has become less than an interest for a year, the notice to treat does not affect the case, and the magistrate has jurisdiction (*R. v. Kennedy*, [1893] 1 Q. B. 533 ; and see *Berley Heath Rail. Co. v. North*, [1894] 2 Q. B. 579). See, however, *Mercer v. Liverpool, St. Helens, etc. Rail. Co.*, [1903] 1 K. B. 652, and note to s. 18, *ante*, p. 35.

**"Be required to give up possession."**—This section does not apply unless the tenant is required to give up possession of his land. Thus, if he receive a notice to treat, such notice to treat is not a requiring possession under this section, and if he claims more than £50 he cannot, until possession is required, have the compensation settled by justices under this section (*R. v. Stone* (1866), L. R. 1 Q. B. 529). The justices, before they assess compensation, are bound to inquire whether the claimant has been required to give up possession before the expiration of the term or interest, as that is

**Sect. 121.** a condition precedent to the right to compensation under this section (*Great Northern and City Rail. Co. v. Tillet*, [1902] 1 K. B. 874). Similarly, if  
**NOTE.** his land is injuriously affected, but none of it is taken, this section is not applicable, but the tenant must proceed under s. 68 (*R. v. Sheriff of Middlesex* (1862), 10 W. R. 717).

It would appear that no notice to treat is required to be given to a tenant whose interest is not greater than a tenant from year to year (*Syers v. Metropolitan Board of Works* (1877), 36 L. T. (N.S.) 277, p. 278, *per* JESSEL, M.R.).

**"Before the expiration of his term."**—If the promoters purchase the reversion and give the tenant notice to quit under the terms of his lease, and do not take possession until the notice has expired, the tenant has no interest, legal or equitable, in the lands, and can make no claim for compensation under this or any other section (*Syers v. Metropolitan Board of Works* (1877), 36 L. T. (N.S.) 277).

If the tenant receive notice to quit from his landlord and hold over, he will have no claim on the compensation paid, although the notice was given by the landlord in order to sell the premises to the promoters of the undertaking (*Ex parte Nadin* (1848), 17 L. J. Ch. 421); and if notice to quit is given by a landlord and the promoters do not take possession until after the notice has expired, the tenant can recover no compensation, although notice to treat may have been given under s. 18 before the landlord gave him notice to quit (*Ex parte Merrett* (1860), 2 L. T. (N.S.) 471).

In such a case if a notice to treat is given, the tenant should at once compel the promoters to proceed under the notice and have his interest assessed (*R. v. Vaughan* (1868), L. R. 4 Q. B. 190, 195; *R. v. Kennedy*, [1893] 1 Q. B. 533); and see s. 18 and note thereto, *ante*, p. 35. A landlord, after notice to treat has been served upon him, cannot turn a weekly tenancy into one for more than a year so as to give the tenant a claim for compensation against the promoters (*Ex parte Edwards* (1871), L. R. 12 Eq. 389).

If, under a local Act, the tenant receives six months' notice that the promoters require possession, and at the end of the six months he does not go nor do the promoters take possession, and they afterwards acquire the landlord's interest in the premises, but no notice to quit is given, they cannot turn out the tenant and take possession without paying him compensation. If he had gone at the end of the six months he would have been entitled to compensation, and although he stayed on he was a mere tenant at sufferance, liable to be turned out at a moment's notice (*Cranwell v. Mayor of London* (1870), L. R. 5 Ex. 284). If the promoters allow the tenant to continue after the six months, and the tenant accepts this as satisfaction, he will, of course, have no claim for compensation (*R. v. London and Southampton Rail. Co.* (1839), 10 Ad. & E. 3, p. 10, explained in the above case, p. 288). The effect of such a notice, even if not acted upon, will entitle the tenant to compensation in respect of any expenses to which he may thereby have been put (*R. v. Commissioners of Rochdale* (1856), 2 Jur. (N.S.) 861).

A tenant leaving in the middle of a quarter will be liable to his landlord for the quarter's rent (*Wainwright v. Ramsden* (1839), 5 M. & W. 602).

A tenant who determines his lease by a six months' notice, because the works to be executed will interfere with his business, has no claim for compensation (*R. v. Poulter* (1887), 20 Q. B. D. 133).

**"He shall be entitled to compensation."**—The items of compensation under this section are similar to those in other cases where land is taken. See s. 63 and notes thereto, where the principles of compensation when land is taken are discussed, *ante*, p. 106. The words in this section are wide enough to include every kind of damage or loss which the tenant can suffer.

(See *per* LUSH, J., *R. v. Great Northern Rail. Co.* (1876), 2 Q. B. D. 151, p. 156.) **Sect. 121.**

**NOTE.**

But if the land taken is held for a term of less than a year and is severed from land held for a term greater than for a year, the justices have no jurisdiction, and the compensation must be assessed under s. 68. There can only be one assessment; part cannot be decided under s. 121 and part under s. 68; and if in previous proceedings the magistrate has been ordered to try the case as having jurisdiction, he cannot award compensation in respect of the damages for injurious affection caused by such severance (*Bexley Heath Rail. Co. v. North*, [1894] 2 Q. B. 579; and as to the previous proceedings, *R. v. Kennedy*, [1893] 1 Q. B. 533, where apparently it was assumed that the tenant had no colourable claim for compensation for injurious affection).

**"Determined by two justices."**—See, as to two justices, definition, s. 3, *ante*, p. 8.

As to the jurisdiction of justices in ascertaining compensation, see s. 22 and notes, *ante*, p. 48.

As to procedure before them, see s. 24, *ante*, p. 52.

It is not necessary that the determination under this section should be put into writing by the justices; it may be given verbally (*R. v. Boyce Combe* (1863), 32 L. J. M. C. 67).

**122.** If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power, and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Where greater interest claimed than from year to year, lease to be produced.

**"May require such party to produce the lease."**—The production of an agreement for a lease, although void at law, if good in equity, is sufficient under this section (*Sweetman v. Metropolitan Rail. Co.* (1864), 1 H. & M. 543; and see *In re King's Leasehold Estates* (1873), L. R. 16 Eq. 521).

**123.** And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed not after the expiration of three years from the passing of the special Act.

Limit of time for compulsory purchase.

**"For the compulsory purchase or taking."**—In the special Act a time is now always prescribed for the execution of the works as well as for the exercise of their compulsory powers of purchase. At the time of the Lands Clauses Act this does not appear to have been so universal a practice (*per* Lord BLACKBURN, *Tiverton, etc. Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480, 496).

**Sect. 123.****NOTE.**

It appears to be a sufficient purchasing or taking within this section if the promoters by notice to treat or by agreement put themselves into a position to acquire the land before the three years have expired, although they may not enter upon it or complete the purchase until later, provided at least, that they do enter or complete before the time has elapsed for the execution of the works.

In *Marquis of Salisbury v. Great Northern Rail. Co.* (1852), 17 Q. B. 840, it was held that the notice to treat under s. 18 was a sufficient exercise of the compulsory power under s. 123, and that entry by the company under s. 85 was not an exercise of the company's powers but an act made legal by the previous exercise of these powers, and, therefore, need not be within the time prescribed by this section. That case was approved in *Tiverton, etc. Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480, 488, and see *Doe d. Armitstead v. North Staffordshire Rail. Co.* (1851), 16 Q. B. 526, to same effect.

It is sufficient if such entry is made a few days before the time limited for the execution of the works, and the promoters cannot be restrained by injunction at the instance of the landowner from remaining in possession and completing their works after that time has elapsed, as the time limited for the execution of the works is merely a limit of time for exercising the powers of the Act as to the construction of the works (*Tiverton, etc. Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480).

For the meaning of the word "take" in a proviso against taking land until certain conditions had been fulfilled, see *Spencer v. Metropolitan Board of Works* (1882), 22 Ch. D. 142.

If the promoters serve a notice to treat and nothing more is done by either party, both promoters and landowner will apparently be disabled from enforcing their rights after the time has expired for executing the works (*Richmond v. North London Rail. Co.* (1868), L. R. 3 Ch. 680, and *Tiverton, etc. Rail. Co. v. Loosemore*, per Lord CAIRNS, p. 489; Lord BLACKBURN, p. 497). But there appears no reason if there has been no sleeping upon their rights why, after that date, the promoters should not fulfil their obligations and have the compensation ascertained and paid (*S. C.*, pp. 490, 491, and *Webb v. Direct London and Portsmouth Rail. Co.* (1851), 9 Hare, 129, p. 140; *Worsley v. South Devon Rail. Co.* (1851), 16 Q. B. 539, 545). See also s. 18, note "How validity of notice affected," *ante*, p. 41.

Where an agreement made between a landowner and a company authorised the company to take certain land within a fixed period and if they should require any additional land, the same should be taken and paid for at a fixed price, it was held that the agreement authorised the company to take such land at any time before the period limited for completing the works (*Rangeley v. Midland Rail. Co.* (1868), L. R. 3 Ch. 306, and see *Kemp v. South Eastern Rail. Co.* (1872), L. R. 7 Ch. 364).

"If no period be prescribed."—If in an Act for extending a railway several purposes are authorised and times limited for the purchase of land for the specific purposes, but none for the general purposes, then the limit of three years here specified will apply as regards the purchase of land for such general purposes (*Seymour v. London and South Western Rail. Co.* (1859), 33 L. T. (O.S.) 280).

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows (a) :

(a) Sections 124—126.

Promoters  
of the under-  
taking

**124.** If, at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of

this or the special Act, or any Act incorporated therewith, they were authorised to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided within six months after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this Act, the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit (a).

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empowered  
to purchase  
interests in  
lands the  
purchase  
whereof may  
have been  
omitted by  
mistake.

(a) See s. 21, note, "Shall be settled in the manner hereinafter provided," *ante*, p. 46.

"Through mistake or inadvertence."—If the promoters, in the belief that the amount assessed for premises will exceed the amount due under an equitable mortgage which they know to exist on premises, deal only with the mortgagors and have the value of the premises assessed as if there was no mortgage, and it turns out that they were mistaken as to their belief, and that the value of the premises is less than the amount of the mortgage, such mistake is not one that will bring them within the provisions of this section. (*Martin v. London, Chatham, and Dover Rail. Co.* (1866), L. R. 1 Ch. 501). Similarly, if promoters, knowing that a person owns certain land, but there is some difficulty in proving the exact position or extent, and they take part of this land without compensation, they cannot afterwards proceed under this section in order to protect themselves from ejectment, and the owner will be entitled to have the land valued according to the improved value and not according to value at the date when it was taken (*Stretton v. Great Western and Brentford Rail. Co.* (1870), L. R. 5 Ch. 751). In such a case

**Sect. 124.** the owner might bring an action for damages for trespass (*Thomas v. Barry Dock and Rail. Co.* (1889), 5 T. L. R. 360).

**NOTE.**

Where the promoters entered upon land and had the same assessed according to their plans and books of reference, and it was shown afterwards upon an action for ejectment that they had taken possession of two roods and five perches beyond the admeasurement in such books, they were held entitled to proceed under this section, provided they did so within six months from the date when the action of ejectment was concluded, which was held to be within six months from the date when a new trial was refused (*Hyde v. Mayor of Manchester* (1852), 5 De G. & S. 249).

In a Scotch case where a railway had been made in a cutting a dispute arose as to the ownership of the minerals above and below the formation level. An action was begun in regard to them, and it was held that the minerals below belonged to the claimants; but those above were left to be dealt with in an arbitration under the Act. No proceedings were taken by either party for two years as to these minerals above the surface, when a second action was begun by the claimants for a declaration that the company were trespassers, and asking damages on that basis. On appeal to the House of Lords it was held that the question had never been determined until this action, and that the railway company were entitled to six months from such determination to acquire the same on the terms mentioned in s. 117 of the Lands Clauses Consolidation (Scotland) Act, 1845, which corresponds to s. 124 of this Act. It was also said by Lord HALSBURY that proceedings should have been initiated by the claimants (*Caledonian Rail. Co. v. Davidson*, [1903] A. C. 22).

As to the correction of mistakes in plans in the case of railways, see the Railways Clauses Act, 1845, s. 7, *post*, and a similar provision will be found in the other Clauses Consolidation Acts. See the same, *post*.

Where promoters have taken land from the ostensible owner, and having entered into possession, are afterwards informed that there is a mortgage on the land of which they were previously ignorant, they can take the benefit of this section (*Jolly v. Wimbledon, etc. Rail. Co.* (1861), 31 L. J. Q. B. 95).

"**Shall remain in the undisturbed possession.**"—The effect of this is that if there is a *bonâ fide* mistake, and there is no dispute as to title, the promoters have a right to undisturbed possession during six months, and no action of ejectment will lie against them during that time (*Jolly v. Wimbledon Rail. Co.* (1861), 31 L. J. Q. B. 95).

If the title is in dispute, an action of ejectment will lie for the purpose of deciding the dispute and the purpose of the Act will be carried out by staying the execution for six months (*Marquis of Salisbury v. Great Northern Rail. Co.* (1858), 7 W. R. 75).

If the owner makes no claim for some time, an injunction will not lie, but the remedy will be by an action for damages for trespass (*Thomas v. Barry Dock and Rail. Co.* (1889), 5 T. L. R. 360).

How value of such lands to be estimated.

**125.** In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or

works made in the said lands by the promoters of the undertaking, **Sect. 125.**  
and as though the works had not been constructed.

If the promoters have entered knowingly, the landowner, if he does not insist on ejectment, is entitled to have the compensation assessed according to the improved value (*Stretton v. Great Western Rail. Co.* (1870), L. R. 5 Ch. 751).

As to the procedure for compensation, see as to justices, ss. 22—24 ; arbitrators, ss. 23, 25—34 ; juries, ss. 35—57. As to the principles, see ss. 63 and 68.

**126.** In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place ; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

Promoters of the undertaking to pay the costs of litigation as to such lands.

*The full costs and expenses.*—These mean costs as between solicitor and client and not merely as between party and party (*Doe d. Hyde v. Mayor of Manchester* (1852), 12 C. B. 474, 479). See also to the like effect the order of the House of Lords in *Caledonian Rail. Co. v. Davidson*, [1903] A. C. 22, p. 37, when the costs were given to the unsuccessful respondents, but limited to those given by the section, which were to be determined by the proper officer of the court. Such costs as did not fall within the section to be paid by the respondents to the appellants.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows (a) :

(a) Sections 127—132. As to the meaning of this heading, see note, "Such superfluous lands," *infra*.

The object of the legislature in these sections is to secure to the landowners from whom land is taken by compulsion a reverting, as nearly as the legislature can accomplish it, of all land which becomes useless or is not wanted for the purpose of the national enterprise which has been sanctioned by Parliament. See *Great Western Rail. Co. v. May* (1874), L. R. 7 H. L. 283, per CAIRNS, L.C., p. 295.

Certain statutes, such as the Metropolitan District Act, 1868, give the promoters unrestricted power of sale over their superfluous lands, and they are thereby relieved from the conditions and restrictions contained in ss. 127 and 128 (*Tomlin v. Budd* (1874), L. R. 18 Eq. 368). Statutes enabling land to be taken for purposes of public improvement generally contain special provisions as to superfluous lands. The Public Health Act, 1875, for example, excludes this section (s. 176, *post*), and the Small Agricultural Holdings Act, 1892, incorporates only ss. 128—131.

**Sect. 127.**

Lands not wanted to be sold, or in default to vest in owners of adjoining lands.

**127.** Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase money arising from such sales to the purposes of the special Act ; and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

**"Lands bought for extraordinary purposes."**—Promoters are frequently allowed to purchase land for extraordinary purposes, as, for example, by the Railways Clauses Act, 1845, s. 45, *post*. Such lands may be bought and sold under ss. 12 and 13 of the Lands Clauses Act, *supra*, and as the promoters may buy and sell such land as they may require it or not (s. 14), these sections are not, therefore, applicable. See *Hooper v. Bourne* (1877), 3 Q. B. D. 258, *per* BRETT, L.J., p. 281. It was so decided as regards the somewhat similar clause in the Lands Clauses Consolidation (Scotland) Act (*City of Glasgow Union Rail. Co. v. Caledonian Rail. Co.* (1871), L. R. 2 H. L. Sc. 160). In that case Lord WESTBURY (p. 165) expressed the opinion that a company is left to deal with the lands which they have acquired by private treaty as any ordinary proprietor, using the words "private treaty" in the sense not merely that they were purchased by agreement, but that they had no compulsory powers in respect of them. If the lands are within the limits of deviation they can be purchased by private treaty after the compulsory powers of taking lands have expired (*cf. Hooper v. Bourne* (1877), 3 Q. B. D. 258).

**"Such superfluous lands."**—These words refer to the heading of these clauses. "Superfluous land" is land "acquired by the promoters of the undertaking," but not "required for the purposes thereof." "Thereof" may refer either to the undertaking (the view now accepted) or to the special or incorporated Acts (*Great Western Rail. Co. v. May* (1874), L. R. 7 H. L. 283, *per* Lord CAIRNS, p. 292). "Required" is used not in the sense of demanded, but of necessary (*per* Lord SELBORNE, in *S.C.*, p. 303).

In that case Lord CAIRNS (p. 292) mentioned four classes of cases where lands would become superfluous ; these are :

- (1) Land taken under compulsory powers, but taken under a wrong estimate of the quantity of land necessary for a purpose, for which it is afterwards found that less land would be sufficient.
- (2) Land which the promoters may have been forced to take by reason of wishing to take a part only of premises (*i.e.*, under ss. 92 and 93).
- (3) Land taken and required originally for permanent works, but which were found unnecessary and were abandoned.
- (4) Land taken for temporary purposes, with the intention only of being used for temporary purposes, which purposes have come to an end.

Land may be said to be "required" for the purposes of the undertaking if (1) it is in actual use ; (2) if it is wanted within a definite and ascertained time ; and (3) if it will be wanted within a reasonable time which it is not possible to specify (*Hooper v. Bourne* (1877), 3 Q. B. D. 258, *per* BRAMWELL, L.J., pp. 274, 275, and see in the House of Lords, 5 App. Cas. 1).

When a thing is said to be "required" for the purposes of a railway, it is not meant that no equivalent or substitute for it can be found, but it is meant that the thing is or will be at a future time, useful for carrying on the traffic (*S.C.*, p. 280).

See further s. 18, note, *ante*, p. 30, on the meaning of "required for the purpose of the undertaking."

The question as to whether land is superfluous or not is a mixed question of law and fact, and one of the most difficult of such questions that have come before a court, and will probably be better tried by a judge than by a judge and jury (*Smith v. North Staffordshire Rail. Co.* (1880), 44 L. T. (N.S.) 85).

In *Macfie v. Callander and Oban Rail. Co.*, [1898] A. C. 270, p. 284, Lord WATSON expressed the view that although the question was one of law and fact it was only on questions of fact that nice considerations arose. He said the issue of fact raised is whether at the expiry of the decennial period the land had become requisite for the purposes of the company or would in all probability become requisite within a reasonable time after that date.

*Cases as to whether lands are superfluous or not.*—Where a railway company purchased land for the purpose of making an underground railway, and excavated the soil, constructed the line, and then built an arch over it and replaced the surface, it was held that they were not authorised to sell this surface as superfluous land within this section, on the principle that if a horizontal stratum was required, that means that the land itself is required, inasmuch as "land" in this section means land properly so called and not a slice of land taken horizontally (*In re Metropolitan District Rail. Co. and Cosh* (1880), 13 Ch. D. 607, and see *Hooper v. Bourne* (1880), 5 App. Cas. 1; (1877), 3 Q. B. D. 258). A purchaser of such a surface has a possessory title which is good against all the world except those who might be proved to have a better one, and it may ripen into a good possessory title under the Statute of Limitations; he can, therefore, sell his possession as it is more than a revocable license or easement (*Rosenberg v. Cook* (1881), 8 Q. B. D. 162). In *Midland Rail. Co. v. Wright*, [1901] 1 Ch. 738, it was held that a good title under the Statute of Limitations could be acquired against a railway company to the surface above a tunnel, and that the disseisor thereby acquired a title not only to the surface but *usque ad cælum*. See also *Norton v. London and North Western Rail. Co.* (1879), 13 Ch. D. 268; *Smith v. Marshall*, [1895] 1 Ch. 641, 648, 651. Such a tunnel as above described is not a mere easement, but is an interest in land (*Metropolitan Rail. Co. v. Fowler*, [1893] A. C. 416).

If a railway company have built a boundary wall and the adjoining field is superfluous, they may sell the surface up to the wall, although the foundations of the wall extend some 18 inches beyond the wall (*Ware v. London, Brighton, and South Coast Rail. Co.* (1882), 31 W. R. 228).

The fact that land retained has not been built on is not conclusive that it is superfluous; all the circumstances must be taken into account, as, for example, if the lands are said to be required for additional sidings, it should be considered whether they are near a populous town and whether additional sidings have subsequently become necessary, the dealings of the company with persons occupying the land should also be regarded (*Hooper v. Bourne* (1880), 5 App. Cas. 1).

In determining the fact whether lands not used are superfluous or not, the following facts are material—that they are small pieces of land near an important railway station, and connected with the station and with the access to it; that they were acquired for the purposes of the railway company; that the proper advisers say that they will be required, although no time be stated; that the company have been without the funds necessary to utilise the land. On these facts a jury would be amply justified in finding

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NOTE.

**Sect. 127.** for the company (*Betts v. Great Eastern Rail. Co.* (1879), 49 L. J. Ex. 197, in the House of Lords).

**NOTE.**

In that case, when before the Court of Appeal, BRAMWELL, L.J., expressed an opinion that when a piece of land taken as a whole is wanted for the purposes of a railway, a discussion should not be allowed as to whether small portions of it are superfluous (*S. C.* (1878), 3 Ex. D. 182, p. 187, and *per* COTTON, L.J., p. 193).

Land under arches, on which a railway line is laid and a station built, is not superfluous land, although some of it be let on short terms. The court so held, partly on the ground that such land is a horizontal stratum only and not land in the ordinary sense, and partly because such land might be necessary for repairs (*Mulliner v. Midland Rail. Co.* (1879), 11 Ch. D. 611).

The company may lease such land, and generally a company is entitled to use its land in any mode not inconsistent with the provisions of its Act provided they do not infringe the rights of other persons (*Foster v. London and North Western Rail. Co.*, [1895] 1 Q. B. 711; *Onslow v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1895), 64 L. J. Ch. 355; *Gonty v. Manchester, Sheffield and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439; *Caledonian Rail. Co. v. Turcan*, [1898] A. C. 256, pp. 266, 268; *Bostock v. North Staffordshire Rail. Co.* (1855), 4 E. & B. 798; *Teebay v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1883), 24 Ch. D. 572).

The mere fact that the company have sold the land is not conclusive as to its being superfluous, as they may in excess of their powers sell it to another company for the use of the undertakings jointly (*Hobbs v. Midland Rail. Co.* (1882), 20 Ch. D. 418).

Similarly, if another company acquire the land compulsorily from the company that originally purchased it, within the period prescribed by the special Act, such compulsory sale affords no ground for inferring that the land was not required by the present company for the purposes of their undertaking, and was thus superfluous land (*Dunhill v. North Eastern Rail. Co.*, [1896] 1 Ch. 121).

The facts that the company have entertained proposals for the sale of the land and have eventually, but after the ten years, leased a portion for the building of a district post office, are not conclusive that the land has become superfluous. The acts of directors are only evidence of the land being superfluous, and do not act as a bar if the land is in fact not superfluous (*Macfie v. Callander and Oban Rail. Co.*, [1898] A. C. 270).

It would seem that where the natural drainage of land belonging to a railway company, and let by them for agricultural purposes, flows into a reservoir used by them for supplying water to their engines, such land is not superfluous (*Hooper v. Bourne* (1877), 3 Q. B. D. 258, 279).

If land is *bonâ fide* bought for the purposes of a railway company, and by an alteration in the construction of the works it is not so used, but is devoted to the purpose of supplying accommodation works under ss. 16 and 68 of the Railway Clauses Act, 1845, it will not become thereby superfluous land under this section (*Beauchamp v. Great Western Rail. Co.* (1868), L. R. 3 Ch. 745; and *cf. Rangeley v. Midland Rail. Co.* (1868), L. R. 3 Ch. 306).

In the following cases the land has been held to be superfluous:

Where land was acquired by a company for the purpose of depositing spoil, but upon which they had ceased to deposit spoil, and all the purposes connected with this land had been satisfied, the land was held to be superfluous (*Great Western Rail. Co. v. May* (1874), L. R. 7 H. L. 283).

Where a railway company had fenced off land adjoining the railway, and had made a ditch and planted a hedge between the fence and the railway, and allowed the fence to decay, and the site of the fence was cultivated as part of the adjoining field, the land between the fence and hedge was held to be superfluous land (*Norton v. London and North Western Rail. Co.* (1879), 13 Ch. D. 268).

It is no answer to a claim that land is superfluous to say that the company have only the reversion and that the tenant has not been turned out (*Moody v. Corbett* (1865), 34 L. J. Q. B. 166; on appeal (1866), L. R. 1 Q. B. 510).

If a company offer to sell the land and advertise it and describe it in the particulars of sale as "surplus lands," this will amount to a declaration by the company that they are superfluous (*London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610), or if they dedicate part of the land as a public way (*Beauchamp v. Great Western Rail. Co.* (1868), L. R. 3 Ch. 745), and generally if they sell it (*Carington v. Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377). But see these cases, discussed in *Macfie v. Callander and Oban Rail. Co.*, [1898] A. C. 270, where it is pointed out that such acts by the directors are only cogent evidence that the land is superfluous and do not estop the company from saying the land is not superfluous if in fact it is not (pp. 275, 276, 284).

In endeavouring to show that land is superfluous by reason of it being offered for sale by auction, it is not enough to show that the auction had been held or that the auctioneer was instructed by the secretary of the company, but it must be shown that it was held by the authority of the directors of the company (*Moody v. London, Brighton and South Coast Rail. Co.* (1861), 1 B. & S. 295).

*The time for ascertaining land to be superfluous.*—The time is the prescribed period or the end of ten years from the time limited for the completion of the works. If the land at that moment is not required for the purposes of the undertaking then it vests in the adjoining owner, unless it is sold at that moment or steps have been taken to have it sold. If not sold before that period then, all lands, of which as a question of fact it can be predicated that they are superfluous, thereupon vest in the adjoining owner (*Great Western Rail. Co. v. May* (1874), L. R. 7 H. L. 283, pp. 295, 296).

There is no doubt that the company can before the expiration of that time determine that the land is superfluous and sell it; and if at the end of the period their proper advisers have fairly and reasonably come to the conclusion that the land may be required for the purposes of the undertaking, then it is not superfluous. The determination of the fact that the land is superfluous may be delayed after the statutory period without the land being actually used, but whenever it is determined, either before or after the expiration of that period that the land is superfluous, it becomes saleable or vests in the adjoining owner (*London and South Western Rail. Co. v. Gomm* (1882), 20 Ch. D. 562, *per* JESSEL, M.R., p. 584). As to selling after the expiration of the period, see same judge in *In re Metropolitan District Rail. Co. and Conh* (1880), 13 Ch. D. 607, p. 615; *Betts v. Great Eastern Rail. Co.* (1879), 49 L. J. Ex. 197.

If the claim by the adjoining owner is made some years after the statutory period has passed, then from these cases (above cited) the end of that period is the time to consider whether the land was or was not superfluous. Subsequent events are, however, admissible in evidence as to whether the lands were reasonably required at that date for the purposes of the undertaking. It is a question of fact and it must be shown by the claimant that the lands were not required, and if the company determined that they were required he must show that they did so on improper grounds; and see also *Hooper v. Bourne* (1880), 5 App. Cas. 1, and (1877), 3 Q. B. D. 258, p. 278; and the Lord President's opinion in *Macfie v. Callander and Oban Rail. Co.*, [1898] A. C. 270, where it is pointed out that the land must vest in the adjoining owner at the end of the period and at no other time, and that the directors have no power of sale subsequently to that period, pp. 276, 278.

If the company after the period has expired obtain a new Act with a clause extending the period at which lands are to be deemed superfluous, this

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will not affect any rights already vested in respect of such lands (*Moody v. Corbett* (1865), 34 L. J. Q. B. 166; on appeal (1866), L. R. 1 Q. B. 510).

Until the time arrives when the lands become superfluous the promoters may use them for the same or similar purposes for which they were previously used, provided they do not alter the ground by erecting buildings and interfering with their neighbour's rights (*Bayley v. Great Western Rail. Co.* (1884), 26 Ch. D. 434; *Norton v. London and North Western Rail. Co.* (1878), 9 Ch. D. 623, to the contrary, was overruled by *Foster v. London, Chatham and Dover Rail. Co.* (1894), 64 L. J. Q. B. 65).

It follows, therefore, that if a railway company buy land with a stable upon it, with a continuous and apparent easement attached thereto in the form of a private road over other lands of the vendor, that they will be entitled to use that road as long as they use the premises as a stable, and they may use it as a stable until it is required for the purposes of the railway or until the land becomes superfluous. When the use of the land is altered the easement will probably cease (*Bayley v. Great Western Rail. Co.* (1884), 26 Ch. D. 434).

**"Shall absolutely sell and dispose."**—When land is sold as superfluous no interest can be retained by the company in the land. A sale of land, therefore, which contains a covenant that the company may buy the land back if required, gives the company an interest in the land, the sale is thus conditional, and is, therefore, *ultra vires* and void (*London and South Western Rail. Co. v. Gomm* (1882), 20 Ch. D. 562).

In that case it was also held that the covenant as it gave the company an interest in the land was also void for remoteness. Although the agreement was void the defendant was held to be entitled to the land either by it vesting in him as an adjoining owner under this section, or as having acquired a title under the Statute of Limitations.

In the case of *Ray v. Walker*, [1892] 2 Q. B. 88, the company had sold the land subject to a covenant by the purchaser that he would resell to the company, if at any time required, a certain defined portion of the land. The adjoining owner claimed the whole of the land so sold as his under this section, but it was held that the covenant only voided the sale as to the portion agreed to be resold; and, further, as this particular portion was a strip along a railway, the person who was the adjoining owner at the end of ten years was the purchaser, and it, therefore, vested in him.

It has, however, been held that a railway company may sell its superfluous land in the way most advantageous to itself, and may impose conditions as to its user for the advantage of the company, as, for example, that premises shall not be used as a public-house, and in that respect companies have the rights of ordinary owners (*In re Higgins and Hitchman's Contract* (1882), 21 Ch. D. 95). A company may also erect a screen opposite windows to prevent an easement of light and air being acquired over its land (*Bonner v. Great Western Rail. Co.* (1883), 24 Ch. D. 1), but if a company cannot grant an easement it would appear to be doubtful if one could be acquired by prescription; and see as to the erection of hoardings, JAMES, L.J., in *Norton v. London and North Western Rail. Co.* (1879), 13 Ch. D. 268, pp. 274—276; and see *Foster v. London, Chatham and Dover Rail. Co.* (1894), 64 L. J. Q. B. 65, overruling the decision of MALINS, V.-C., in *Norton v. London, Chatham and Dover Rail. Co.* (1878), 9 Ch. D. 623.

Where the company sells land just before the period expires, but by another deed retains a lien upon them for the unpaid purchase money, it is doubtful whether this is an absolute sale, and a subsequent purchaser cannot be bound to take such land, although the purchase money may have since been paid off (*In re Thackuray and Young's Contract* (1888), 40 Ch. D. 34).

As to the right of pre-emption, see next section.

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NOTE.

**What the purchaser acquires.**—I. *If land superfluous.*—The purchaser does not acquire any greater right in the land than that of the promoters from whom he derives his title. If, therefore, a railway company purchases the surface of land without the mines and afterwards sells part of this land as superfluous the purchaser acquires no right of support from such minerals, and the owner thereof may work them in the usual way whether he let down the surface or not (*Pountney v. Clayton* (1883), 11 Q. B. D. 820; and *cf. Hooper v. Bourne* (1877), 3 Q. B. D. 258).

The purchaser also takes the land subject to the restrictions existing before it was taken compulsorily. Thus, if land taken by a railway company was part of an inclosure, and by an inclosure Act no building could be erected on it, and it is taken by a railway company and sold as superfluous land, the purchaser will be restrained from building on it (*Bird v. Eggleton* (1885), 29 Ch. D. 1012).

II. *If land not superfluous.*—Unless the power is conferred by special enactment a railway company possesses no power to alienate either for value or without, any portion of the land actually used for the railway or works or to grant easements, if such easements interfere with the purpose for which the land is acquired by the company, so that any such attempted alienation or grant is void (*Mulliner v. Midland Rail. Co.* (1879), 11 Ch. D. 611; *Great Western Rail. Co. v. Solihull Rural District Council* (1902), 86 L. T. 852).

It has been held, however, that the mere fact that the land is not superfluous does not prevent an occupier who has exclusive adverse possession for twelve years from becoming entitled to the land under the Statute of Limitations (*Bobbett v. South Eastern Rail. Co.* (1882), 9 Q. B. D. 424; and see *Norton v. London and North Western Rail. Co.* (1879), 13 Ch. D. 268; *London and South Western Rail. Co. v. Gomm* (1882), 20 Ch. D. 562).

The purchaser of superfluous land on a subsequent sale may probably find it advisable to insert as a condition of sale that the purchaser shall assume and admit that everything (if anything were necessary) was done by the company to enable them to sell and convey the land. Such a condition is good (*Best v. Hammond* (1879), 12 Ch. D. 1; and see *Rosenberg v. Cook* (1881), 8 Q. B. D. 162).

**"Shall thereupon vest."**—If the land is superfluous at the expiration of the ten years the Act of Parliament vests the land in the adjoining owner. The operation of vesting does not depend in any way upon the consent or the acceptance of the owner of the adjoining land, and it is not necessary that he should do any act to bring about the result (*Great Western Rail. Co. v. May* (1874), L. R. 7 H. L. 283, p. 298).

It seems doubtful as to whether the surface and the minerals can be severed so as to make either vest in the adjoining owner if the other become superfluous (*Hooper v. Bourne* (1877), 3 Q. B. D. 258; (1880), 5 App. Cas. 1).

If no action is taken by the adjoining owner and the company lets the land to a yearly tenant after the period, they can bring an action of ejectment, and the tenant cannot plead thereto that the land is vested in the adjoining owner as he is estopped from disputing their title (*London and North Western Rail. Co. v. West* (1867), 36 L. J. C. P. 245).

**"Of the owners of the land adjoining."**—Where commonable lands have been inclosed under an award made pursuant to a local statute passed subsequently to 41 Geo. 3, c. 109, and by the award the soil of the roads between the allotments remains vested in the lord of the manor, although under the above statute the grass and herbage on the road belongs to the owner of an allotment, the lord of the manor will be the adjoining owner if land on one side of the road becomes superfluous (*Hooper v. Bourne* (1877), 3 Q. B. D. 258).

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A right of pre-emption to the land under s. 128 by the owners of the lands from which they were severed will not make such owners adjoining owners within this section (*S. C.*, p. 278).

Where, by agreement, a wall has been built on land dividing the property of an individual from that of the company, and the individual and the company are by the same agreement the joint owners of the land on which the land is built, that will constitute the individual an adjoining owner having his right of pre-emption to the land as against the company (*London and South Western Rail. Co. v. Blackmore* (1870), *L. R.* 4 *H. L.* 610, a case under s. 128).

See note to s. 128, "Whose lands shall immediately adjoin," *post*, p. 262.

"In proportion to the extent of their lands respectively adjoining."—It is left to the courts to decide how this is to be carried out. As to some of the difficulties arising under this section, see *per Lord HATHERLEY* in *Great Western Rail. Co. v. May* (1874), *L. R.* 7 *H. L.* 283, pp. 302, 303.

In *Moody v. Corbett* (1866), *L. R.* 1 *Q. B.* 510, the court laid down the following rule: "Where there are several adjoining properties in contact with the superfluous lands in question, we think it should be divided among the owners of such adjoining properties in proportion to the frontage of each; and by frontage we mean what would be the length of the line of contact of each property if such line was made straight from the point of intersection of the boundaries on one side to the point of intersection of the two boundaries on the other side." In *Smith v. Smith* (1868), *L. R.* 3 *Ex.* 282, p. 287, a different principle appears to have been adopted.

*Undertaking abandoned.*—If the undertakers abandon a portion of their undertaking, this in itself does not make the land superfluous, and the landowner from whose lands they were severed is not entitled to have them reconveyed to him (*Astley v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1858), 27 *L. J. Ch.* 478). So also where a railway was made and found defective and was never used for public traffic, it was held that this section did not apply (*In re Duffy's Estate*, [1897] 1 *I. R.* 307).

Where undertakings are abandoned provision is usually made for compensation to landowners whose rights have been interfered with, as, for example, by the Railways Abandonment Act, 1850, ss. 17—27, 34, *post*.

In these cases the special provisions apply, and s. 127 of this Act has no application (*Smith v. Smith* (1868), *L. R.* 3 *Ex.* 282).

Lands to be offered to owner of lands from which they were originally taken or to adjoining owners.

**128.** Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

**"Dispose."**—This means transferring them to some other person. An application to Parliament to sanction their being used for a different purpose, as for a new line of railway, is not a disposing of them under this section (*Astley v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1858), 27 L. J. Ch. 478). Sect. 128.  
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But selling them or dedicating them as a public highway is a disposing of them (*London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610; *Carington v. Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377; *Beauchamp v. Great Western Rail. Co.* (1868), L. R. 3 Ch. 745).

The effect of this section is not, it would appear, to prevent the company from contracting to sell before they have offered the land to the persons entitled to pre-emption, but to prevent them conveying. An agreement for sale by the company can, therefore, be enforced by them, although they have not so offered it, provided that such offer is made and refused before the conveyance (*London and Greenwich Rail. Co. v. Goodchild* (1844), 3 Rail. Cas. 507, decided on a special Act with a somewhat similar provision).

**"Within a town."**—The word "town" here is used in a popular sense as a congregation of houses, and land will be within a town if it is surrounded by houses so reasonably near that the inhabitants might be fairly said to dwell together. See *R. v. Cottle* (1851), 16 Q. B. 412, pp. 416, 420; *Elliott v. South Devon Rail. Co.* (1848), 2 Exch. 725, approved by the House of Lords in *London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610. In that last case, HATHERLEY, L.C., said the above definition amounts to this: "That where there is such an amount of continuous occupancy of the ground by houses that persons may be said to be living, as it were, in the same town or place continuously, there—for the purposes of the Railway Acts and according to the popular sense of the word, and not the legal sense of the word, which would not give at all a sensible definition—the place may be said to be a town."

It follows from that definition that land within a borough may not be "within a town" under this section if it is separated from the mass of the houses and is not surrounded by land covered by continuous houses, using the term "continuous" in the popular sense as distinguished from contiguous (*Carington v. Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377).

See also note to s. 93, *ante*, p. 227.

As to the extent of London, see *Wallace v. Attorney-General* (1864), 33 Beav. 384, and *Coventry v. London, Brighton and South Coast Rail. Co.* (1867), L. R. 5 Eq. 104.

**"Lands built upon."**—These words mean something which, though it cannot be called land in a town or part of a town, is land covered with continuous buildings *eodem modo* as the solum of the town; it does not mean a piece of land in the open country that has a house upon it (*Carington v. Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377).

**"Or used for building purposes."**—These words are to be construed with reference to the previous words "lands built upon." It must be land connected with or used with land built over, as for a reasonably-sized garden or for a reasonable amount of curtilage. It does not mean land suitable for building purposes, or what is ordinarily called building land (*London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610). It ought actually to be land used for building purposes (*Carington v. Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377, p. 384). It would appear to be enough if the houses are actually laid out, if the land has been sold as building land or let upon building leases though the houses are not actually built (*Coventry v. London, Brighton and South Coast Rail. Co.* (1867), L. R. 5 Eq. 104).

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**"First offer to sell."**—It is not necessary that the ten years mentioned in s. 127 should expire in order to enable the landowner to claim his right of pre-emption. If by selling it to some one else, or by any other act, the promoters thereby show it to be superfluous land, the landowner from whose lands it was severed may at once bring an action to enforce this right of pre-emption. The right of pre-emption arises at the very moment the directors of a company chose to sell (*Carington v. Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377; *London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610; *Hobbs v. Midland Rail. Co.* (1882), 20 Ch. D. 418).

As to when lands do become superfluous, see note to s. 127, *ante*, p. 254.

In some special Acts it is provided that superfluous lands shall be first offered to the person or persons of whom the same were purchased. In such a case, the right of pre-emption is confined to the actual vendors and no claim can be made by their successors in title (*Highgate Archway Co. v. Jeakes* (1871), L. R. 12 Eq. 9).

**"From which the same were originally severed."**—The right of pre-emption in this case given to the owner of the lands from which they were originally severed does not make such person an adjoining owner within the meaning of the last section (*Hooper v. Bourne* (1877), 3 Q. B. D. 258, p. 278; *Hobbs v. Midland Rail. Co.* (1882), 20 Ch. D. 418, 429).

As to when lands can be said to be severed, see note to s. 63, *ante*, p. 104.

It would appear that where land is severed from other land held therewith under the meaning of s. 63 that if part of such land become superfluous it must be offered to the person from whom it was taken (*Hobbs v. Midland Rail. Co.* (1882), 20 Ch. D. 418, p. 430).

**"Whose lands shall immediately adjoin."**—The persons whose lands adjoin the superfluous land, and are by this Act entitled to buy, will include persons having a limited interest. Lessees for years would, therefore, come within the meaning and would be entitled to have the right of pre-emption offered them provided all the other adjoining owners decline to take it (*Coventry v. London, Brighton and South Coast Rail. Co.* (1867), L. R. 5 Eq. 104).

If a private road intervene between the superfluous land and the land leased, over which the lessees have the exclusive right of user, this will not prevent them from being owners of lands immediately adjoining within the meaning of this section (S. C.). But see s. 127, note, "Of the owners of the land adjoining," *ante*, p. 259, and *cf. In re Baroness Bateman and Parker's Contract*, [1899] 1 Ch. 599, on the meaning of the word "adjoining" in the Consecration of Churchyards Act, 1867.

**"Where more than one such person."**—If there be more than one adjoining owner, he cannot insist on the promoters offering the land to him, but he can insist that they shall not offer the land to a stranger without at least offering it to him in his turn. If the promoters have made no choice, all the adjoining proprietors stand *in pari ratione*. If one adjoining owner, therefore, seek to enforce his right, an inquiry will be ordered as to whether any other adjoining owner desires to purchase, and if none, then it must be offered to the owner applying. If any adjoining owner other than the one applying so desires, the court will reserve liberty to apply (*London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610; and see form of order, p. 627).

It would appear doubtful how far this applies to persons with limited interests in the plots of the adjoining lands and if they would only be entitled to a right of pre-emption to the extent of their limited interest (*Coventry v. London, Brighton and South Coast Rail. Co.* (1867), L. R. 5 Eq. 104, p. 108).

**129.** If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking; or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made, and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

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Right of pre-emption to be claimed within six weeks.

**130.** If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

Differences as to price to be settled by arbitration.

An arbitration under this section is not governed by the earlier sections of this Act as to settling questions of disputed compensation by arbitration (ss. 23, 25—37). The company is not bound to pay the costs under s. 34, and the arbitrator has power to order each party to pay his own costs (*In re Eyre's Trusts*, W. N. (1869) 76).

As these sections of the Lands Clauses Act do not apply, a *mandamus* will not be granted to compel the company to take up the award. The purchaser may do so himself (*Jones v. South Staffordshire Rail. Co.* (1869), 19 L. T. (N.S.) 603).

It would seem to follow, therefore, that such costs cannot be taxed by a taxing master under the Lands Clauses (Taxation of Costs) Act, 1895 (58 Vict. c. 11), s. 1, as that applies to arbitrations to settle questions of disputed compensation. See also s. 1 of the Lands Clauses Act, 1869, *post*, which the later Act repeals and in effect re-enacts.

The arbitration will, however, be subject to the provisions of the Arbitration Act, 1889, and by s. 3, Schedule I. (i), the arbitrator may tax the costs. See *post*.

**131.** Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof, by deed under the common seal of the promoters of the undertaking if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking, or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands

Lands to be conveyed to the purchasers.

**Sect. 131.** comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him ; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking, as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

As to what covenants and conditions may be inserted, see note to s. 127, "Shall absolutely sell and dispose," *ante*, p. 258 ; and as to covenants implied, see next section. There appears now no reason why such conveyance should not be made under the Conveyancing Act, 1881 (44 & 45 Vict. c. 41).

Effect of  
the word  
"grant" in  
conveyances.

**132.** In every conveyance of lands to be made by the promoters of the undertaking under this or the special Act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance ; (that is to say,)

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them :

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns (as the case may be), shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors from all incumbrances created by the promoters of the undertaking :

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns (as the case may be), by the promoters of the undertaking, or their successors, and all other persons claiming under them :

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

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See the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 49 of which provides that the word "grant" is not necessary to convey hereditaments, and as to implied covenants for title, see s. 7 thereof.

**133.** And be it enacted, (a) that if the promoters of the under-  
taking become possessed by virtue of this or the special Act, or  
any Act incorporated therewith, of any lands charged with the  
land tax, or liable to be assessed to the poor's rate, they shall from  
time to time, until the works shall be completed and assessed to  
such land tax or poor's rate, be liable to make good the deficiency  
in the several assessments for land tax and poor's rate by reason  
of such lands having been taken or used for the purposes of the  
works; and such deficiency shall be computed according to the  
rental at which such lands, with any building thereon, were valued  
or rated at the time of the passing of the special Act; and on  
demand of such deficiency the promoters of the undertaking, or  
their treasurer, shall pay all such deficiencies to the collector  
of the said assessments respectively; nevertheless, if at any time  
the promoters of the undertaking think fit to redeem such land tax,  
they may do so, in accordance with the powers in that behalf given  
by the Acts for the redemption of the land tax.

Land tax and  
poor's rate  
to be made  
good.

(a) These words are apparently intended to separate this section from the previous group of clauses, and make it a distinct enactment.

**"The promoters of the undertaking."**—Public bodies authorised to execute works under special Acts incorporating the Lands Clauses Act, 1845, who are without any pecuniary interest in the works, are "promoters" within the meaning of this section. Thus, the Metropolitan Board of Works has been held liable to make good the deficiency caused by its taking lands for public improvements (*Wheeler v. Metropolitan Board of Works* (1869), L. R. 4 Ex. 303; *Stratton v. Metropolitan Board of Works* (1874), L. R. 10 C. P. 76). As to the Corporation of London, see *Mayor of London v. St. Andrew, Holborn* (1867), L. R. 2 C. P. 574. An urban sanitary authority taking land for improvements under the Public Health Act must also make good the deficiency (*Governor of Poor of Bristol v. Mayor of Bristol* (1887), 18 Q. B. D. 549), and so must a local authority taking land for the purposes of either Part I. or Part III. of the Housing of the Working Classes Act, 1890 (*Ventry of St. Leonard, Shoreditch v. London County Council* (1895), 11 T. L. R., p. 420). In some local Acts for public improvements Parliament has authorised the omission of this section.

See definition of "Promoters of the undertaking" in s. 2, *ante*, p. 3.

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## NOTE.

**"By virtue of this or the special Act."**—If lands outside the limits of deviation are purchased by a railway company, by agreement with the landowner in order to buy off his opposition to the passing of the Bill, and are not used for the execution of the works, the company cannot, for the purpose of this section, be heard to say that they had become possessed of the houses otherwise than by virtue of their Acts. They have no powers except those given them by these Acts and the purchase of land otherwise than for the purposes of the undertaking would be illegal (*Overseers of Putney v. London and South Western Rail. Co.*, [1891] 1 Q. B. 440).

**"Until the works shall be completed and assessed."**—Where, by the terms of a special Act, a railway company were to make good the deficiency in the rates "until the railway or the works thereof are completed and assessed, or liable to be assessed," it was held that the rate was a parochial rate, and that on the completion of the portion of the railway in any particular parish, that the company were no longer obliged to make good the deficiency, although the value of the completed line in the parish was of less value than the land and houses taken. The clause is not an indemnity clause after the works have been completed (*East London Rail. Co. v. Whitechurch* (1874), L. R. 7 H. L. 81, overruling *R. v. Metropolitan District Rail. Co.* (1871), L. R. 6 Q. B. 698).

In the above case it was argued that the parish officers had an option whether they would assess the company upon the railway or continue to assess it upon the rental of the lands acquired by it under the Act; but it was held that if the railway was liable to be assessed that the parish was compellable to rate it, even though such rating be less valuable than that to which the parish was entitled to while the railway was being constructed (*S. C.*, pp. 92, 93).

In the Lands Clauses Act the words "liable to be assessed" are omitted. Lord HATHERLEY expressed the opinion that if these words had not existed in the special Act the above argument would have been stronger (p. 93).

It would seem to follow from the above case that if part of a railway is completed and being worked, that as it would then be liable to be assessed, the parish could not claim the deficiency in respect of that part. See *per* BRAMWELL, B., in the same case in the Exchequer Court ((1872), L. R. 7 Ex. 248, p. 254).

**Public works.**—The words of this section quoted above mark the period during which compensation shall be paid to the parish, and not the measure of the compensation—the event upon which the liability is to end, not the extent of the liability. If the land is taken for public purposes and if the works when completed will not be assessable, being public ways, this proviso does not free the promoters from making good the deficiency, and in such a case the court will construe the section so that the promoters shall be liable to make good the deficiency, but only up to the time when the works are completed, and such parts of them as become assessable property are assessed. In these cases the promoters are usually empowered to take more land than is necessary for the actual construction of the street or public way. If the special Act provides that on the giving of a certificate of completion that the works are complete, then the date of such certificate is the date from which their liability to make good the deficiency ceases, and the other lands remaining in their hands become from that date assessable. If prior to that date any of the lands had been sold or buildings erected so that they became assessable, the rateable value of such buildings should be credited against the deficiency (*Strutton v. Metropolitan Board of Works* (1874), L. R. 10 C. P. 76; *cf. Wheeler v. Metropolitan Board of Works* (1869), L. R. 4 Ex. 303).

The above principle was adopted by the Court of Appeal in *Governor of Poor of Bristol v. Mayor of Bristol* (1887), 18 Q. B. D. 549. In that case there was no certificate of completion; the promoters were, therefore, held liable to make good the deficiency until the completion of the street, or the sale of the last piece of land in fee simple, or the creation of the last of the ground rents, whichever of these events should last happen. The sale of the land or the creation of the ground rents would bring back the land to its liability to be assessed, and the deficiency would be wiped out as the separate portions of land became rated, and it may be wiped out before all the land is sold or the rents created, as some of the land may be rated more highly after the alteration. The deficiency must, therefore, be computed from time to time until the liability ceases; that would be every six months or whatever the period of the rate, and the deficiency will be found by taking the rateable value of the lands taken at the time of the passing of the special Act, and the assessed value at the time of such computation of such of the lands taken as may have again become assessable, and the excess, if any, of the former value over the latter is the deficiency.

Where several improvement schemes are approved by the provisional order confirmed by statute, then, for the purposes of this section, each scheme is to be considered a separate undertaking, and the deficiency calculated on each separate undertaking within the area affected by it (*S. C.*).

**"To make good the deficiency."**—If the promoters are not rateable in respect of lands, inasmuch as they do not beneficially occupy them, this section does not make them rateable; it merely provides that if a deficiency is occasioned in the assessments for the poor's rate by the operations of the promoters, that they shall make up that deficiency (*Mayor of London v. St. Andrew, Holborn* (1867), L. R. 2 C. P. 574). The scheme of the section is to create a parochial indemnity during the execution of the works (*Overseers of Putney v. London and South Western Rail. Co.*, [1891] 1 Q. B. 440, p. 443).

**"Such deficiency shall be computed," etc.**—The computation is to be made according to the rental at which the lands were rated or valued at the time of passing the special Act. It, therefore, follows that if the premises have not been assessed at the time of the passing of the special Act because they were in the occupation of servants of the crown, the promoters will have to make good no deficiency although the premises would have been rateable if occupied by persons other than the servants of the crown (*Stratton v. Metropolitan Board of Works* (1874), L. R. 10 C. P. 79).

In computing the deficiency, it is not a question of what was paid but a question of what was assessed. To ascertain the deficiency one must first ascertain the rental at which the land was valued or rated at the time of passing the special Act and then subtract from it the rateable value of that land at the time when it is sought to ascertain the deficiency. The difference is the deficiency. It does not, therefore, matter whether at the time the houses are taken several of them are unoccupied and the parish receiving no rates in respect thereof (*Overseers of Putney v. London and South Western Rail. Co.*, [1891] 1 Q. B. 440). Similarly, promoters cannot claim the benefit of agreements with owners of small tenements, under which a commission is allowed to them under 32 & 33 Vict. c. 41 (*Vestry of St. Leonard, Shoreditch v. London County Council* (1895), 11 T. L. R. 420).

"Deficiency" does not mean any amount that shall be found wanting to make up the amount required by the parish (*Stratton v. Metropolitan Board of Works* (1874), L. R. 10 C. P. 76). See also, on computing it from time to time as the land becomes assessable, *Governor of Poor of Bristol v. Mayor of Bristol* (1887), 18 Q. B. D. 549, set out *supra*.

Sect. 133.

NOTE.

## Sect. 133.

## NOTE.

"In the several assessments for land tax and poor's rate."—Under poor's rate are included such rates as are charged upon or made payable out of the poor's rate. These will include the borough rate under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 145, and the county rate (under 15 & 16 Vict. c. 81, s. 26). The liability of the promoters depends on the nature and incidence of these rates at the time when the deficiency takes place, and not at the date when the Lands Clauses Consolidation Act was passed (*Farmer v. London and North Western Rail. Co.* (1888), 20 Q. B. D. 788).

By the London Government Act, 1899 (62 & 63 Vict. c. 14), s. 10 (2), the general rate and poor rate are to be assessed, made, and levied together by the council as one rate, termed the general rate, which is to be assessed, made, and collected as if it were the poor rate, but the demand rate is to distinguish the purposes for which the rate is made. It was held that promoters were not liable to make good the whole deficiency in the poor rate, but only such part as represented the poor rate (*Islington Corporation v. London School Board*, [1902] 2 K. B. 701. Affirmed C. A., July 1st, 1903).

In some special Acts the promoters are required to make good the deficiencies in the other rates, such as the sewers rate, main drainage rate, or general purposes rate. The words "general purposes rate" in such a proviso have been held to mean all rates made for purposes in which the great majority of the parishioners have a common interest, and to include the metropolitan consolidated rate, the lighting rate, and the public libraries rate (*Barrup v. London and South Western Rail. Co.* (1890), 64 L. T. (N.S.) 112).

Under the words of a clause in the Great Northern and City Railway Act, 1892, it was sought by complaint before justices to make the promoters liable for consolidated, sewer, and other rates on land which had had houses on it, but was vacant at the time the promoters acquired the land and also at the date when the rate was made, it was held that the remedy was by action, if any, but it was thought that the section which the court considered unintelligible, only meant that the deficiency should be made good which had been caused by the acts of the promoters (*Churchwards, etc. of St. Stephen, City of London v. Great Northern and City Rail. Co.* (1902), 18 T. L. R. 350).

"On demand . . . the promoters . . . shall."—The liability of the promoters to make good the deficiency accrues from time to time as the rates are made; the payment is to be made on demand. The demand, however, need not be made from time to time as the rates are made and collected. If such demand is not made when the rates are collected, the liability of the promoters is not extinguished and the arrears may be recovered in a lump sum (*Stratton v. Metropolitan Board of Works* (1874), L. R. 10 C. P. 76).

*Enforcing payment.*—The payment may be enforced by action in the High Court or otherwise. In the event of any disputed question of law being raised, it is usual to state a special case in the action (*Stratton v. Metropolitan Board of Works* (1874), L. R. 10 C. P. 76; *Governor of Poor of Bristol v. Mayor of Bristol* (1887), 18 Q. B. D. 549, and other cases above cited).

Service of  
notices upon  
company.

**134.** And be it enacted, that any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of

the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters. **Sect. 134.**

Order 9, r. 8, of the Rules of the Supreme Court, which provide for service of a writ or summons, exempts statutory provisions from its operation so that they may be served as provided in this section.

Section 135 of the Companies Clauses Act, 1845, is similar in effect, except that when the notice is served on the secretary it must be given and not posted, and failing a secretary, it may be given to any one director of the company. Section 138 of the Railways Clauses Consolidation Act, 1845, *post*, is to the same effect, and for cases of service upon a railway company, see the notes to that section.

**"Any summons or notice."**—This does not contemplate any proceedings in an action, but the section is applicable in all cases where a summons or notice is required for any purpose (*Ex parte Senior* (1849), 18 L. J. Q. B. 333, p. 334).

**Wrong service or address.**—If a notice is wrongly addressed, it will be quite sufficient provided the company are not misled. Thus, a notice under s. 68, addressed to "The Blackburn and Clitheroe Railway Company," and delivered to the secretary of "The Blackburn Railway Company," and intended for the latter, was held to be sufficient (*Eastham v. Blackburn Rail. Co.* (1854), 9 Ex. Rep. 758).

If the company wish that notices should be served on their secretary and not on their solicitors, they should state so at once, and not after an award, and any endeavour to upset the award for such wrong service will be refused (*R. v. Metropolitan Rail. Co., Ex parte Knock* (1867), 17 L. T. (N.S.) 291).

**135.** And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court. **Tender of amends.**

As to the effect of payment into court in an action in the High Court, see Rules of the Supreme Court, O. 22, and *cf.* s. 1 (b) (c) of the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows: (a)

(a) Sections 136—148.

**136.** Every penalty or forfeiture imposed by this or the special Act, or by any byelaw made in pursuance thereof, the recovery **Penalties to be summarily recovered before two justices.**

**Sect. 136.** of which is not otherwise provided for, may be recovered by summary proceeding before two justices; [*and on complaint being made to any justice he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons; and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit (a).*]

(a) Repealed by the Statute Law Revision Act, 1892.

The procedure will be governed by the Summary Jurisdiction Acts of 1848, 1879 and 1884, and the Summary Jurisdiction (Process) Act, 1881.

The Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4, in order to provide for uniformity of procedure before courts of summary jurisdiction and appeals therefrom, repealed, as regards England, the portion of s. 136 in italics above; and ss. 137, 142, 143, so far as it relates to any matter to which the Summary Jurisdiction Acts apply; s. 144; and s. 146 from "for the county" to end of section and Schedule C. With the exception of ss. 143 and 146, these sections have been repealed altogether by the Statute Law Revision Acts.

As to the effect of the repeals by the Summary Jurisdiction Acts, see *Shingler v. Smith* (1886), 17 Q. B. D. 49.

Penalties to be levied by distress.

**137.** [*If, forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices or either of them shall issue their or his warrant of distress accordingly.*]

This section has been repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19). See note to s. 136. ▲

Distress how to be levied.

**138.** Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after

satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained. **Sect. 138.**

**139.** The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish [*or if the place wherein the offence shall have been committed shall be extra-parochial then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or if there shall not be any poor's rate therein in aid of the poor's rate of any adjoining parish or district*]. (a) **Application of penalties.**

(a) These words have been repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

**140.** If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same. **Distress against the treasurer.**

**141.** No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser ab initio on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case. **Distress not unlawful for want of form.**

**Sect. 142.**

Penalties to be sued for within six months.

**142.** [*No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special Act, or any Act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.*]

Repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19). See note to s. 136, *ante*, p. 270.

Penalty on witnesses making default.

**143.** It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction, under the provisions of this or the special Act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter ; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

The Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4, has repealed this section as regards England so far as relates to any matter to which the Summary Jurisdiction Acts apply. These Acts are, as regards England, the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43) ; the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49) ; the Summary Jurisdiction Act, 1884 ; and the Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24).

This section is probably still applicable to procedure before justices in cases of disputed compensation. See s. 24, *ante*, p. 52.

Former conviction.

**144.** [*The justices before whom any person shall be convicted of any offence against this or the special Act, or any Act incorporated therewith, may cause the conviction to be drawn up according to the form in the Schedule (C.) to this Act annexed.*]

This section has been repealed by the Statute Law Revision Act, 1892. See note to s. 136, *ante*, p. 270.

Proceedings not to be quashed for want of form.

**145.** No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts.

The effect of this section is that no proceeding before justices or inquisition before a jury can be set aside for want of regularity in the proceedings,

for wrong admission of evidence, or for wrong direction to the jury, provided that the justices, sheriff, or jury have jurisdiction, or having it they do not exceed it. If they have no jurisdiction, then notwithstanding this section, the finding or verdict may be removed into the High Court by writ of *certiorari* and quashed. See this fully discussed in the notes to ss. 37 and 50, *ante*, pp. 70 and 84; and see *per HALSBURY, L.C., Couper Essex v. Acton Local Board* (1889), 14 App. Cas. 153, p. 160.

For examples of irregularity, see *R. v. Sheffield, etc. Rail. Co.* (1839), 11 A. & E. 194; *R. v. Bristol and Exeter Rail. Co.* (1838), 11 A. & E. 202, note.

Excess of jurisdiction need not appear on the face of the proceedings, but may be shown by affidavit (*Re Penny* (1857), 7 E. & B. 660).

Cases of no jurisdiction occur principally through the justices or presiding officer being interested as a shareholder or otherwise. See note to s. 50, *ante*, p. 85.

As to interested justices, see s. 3, note, "Justices," *ante*, p. 7; and see *R. v. London and North Western Rail. Co.* (1863), 12 W. R. 208; *Ex parte Baddeley* (1849), 5 Rail. Cas. 542; *Re Edmundson* (1851), 17 Q. B. 67; *R. v. Commissioners of Cheltenham* (1841), 1 Q. B. 467; *R. v. Aberdare Canal Co.* (1850), 14 Q. B. 854; *R. v. Rand* (1866), L. R. 1 Q. B. 230.

Cases of excess of jurisdiction arise by reason of the jury assessing compensation in respect of items which are not a subject of compensation (*In re Penny and South Eastern Rail. Co.* (1857), 7 E. & B. 660; *R. v. London and North Western Rail. Co.* (1854), 3 E. & B. 443; and note to s. 50).

**146.** If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions [for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon]. (a)

**Sect. 145.**

NOTE.

Parties allowed to appeal to quarter sessions, on giving security.

(a) These words are repealed as regards England by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4. See note to s. 136, *ante*, p. 270.

As to procedure on appeals, see ss. 31, 32 of the Summary Jurisdiction Act, 1879, and s. 6 of the Summary Jurisdiction Act, 1884, and Baines's Act (12 & 13 Vict. c. 45).

As to justices stating a special case, see s. 33 of the Summary Jurisdiction Act, 1879, and 20 & 21 Vict. c. 43.

**147.** At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the Court to make such order as they think reasonable.

**Sect. 147.** following sessions ; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable ; and they may make such order concerning the costs both of the adjudication and of the appeal, as they may think reasonable.

Receiver of  
the metro-  
politan police  
district to  
receive  
penalties  
incurred  
within his  
district.

**148.** Provided always [*and be it enacted*], (a) that notwithstanding any thing herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied, in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by the Metropolitan Police Courts Act, 1839 ; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act ; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses, as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

2 & 3 Vict.  
c. 71.

(a) These words have been repealed by the Statute Law Revision Act, 1891.

Persons  
giving false  
evidence  
liable to  
penalties of  
perjury.

**149.** And be it enacted, that any person who upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

A person who makes an affirmation instead of taking an oath is liable to the same penalties (Oaths Act, 1888 (51 & 52 Vict. c. 46), s. 1).

And with respect to the provision to be made for affording **Sect. 149.**  
access to the special Act by all parties interested, be it enacted as  
follows : (a)

(a) Sections 150, 151.

**150.** The company shall at all times after the expiration of Copies of special Act to be kept and deposited, and allowed to be inspected.  
six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them ; and where the undertaking shall be a railway, canal or other like undertaking, the works of which shall not be confined to one town or place, shall also within the space of such six months deposit in the office of each of the clerks of the peace (a) of the several counties into which the works shall extend a copy of such special Act, so printed as aforesaid ; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms and under the like penalty for default as is provided in the case of certain plans and sections by the Parliamentary Documents Deposit Act, 1837.

7 Will. 4 &  
1 Vict. c. 83.

(a) See definition, s. 3, *ante*, p. 4.

**151.** If the company shall fail to keep or deposit, as herein- Penalty on company failing to keep or deposit.  
before mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

**152.** And be it enacted, that this Act shall not extend to Act not to extend to Scotland.  
Scotland.

This Act extends to Ireland, but ss. 18—68 do not apply to Irish railways to which the Railways Act (Ireland), 1851 (14 & 15 Vict. c. 70), applies ; see s. 3. The corresponding Act for Scotland is 8 & 9 Vict. c. 19.

**153.** [*And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present session of Parlia- Act may be amended this session.*  
ment.]

Repealed by the Statute Law Revision Act, 1875.

**Sched. A.**

## SCHEDULES REFERRED TO IN THE FOREGOING ACT.

## SCHEDULE (A.).

[Section 81.]

## FORM OF CONVEYANCE.

I , of , in consideration of the sum of paid to me [or, as the case may be, into the Bank of England [or Bank of Ireland], in the name and with the privity of the Accountant-General of the Court of Chancery, ex parte "the promoters of the undertaking" [naming them], or to A. B., of , and C. D., of , two trustees appointed to receive the same], pursuant to the [here name the special Act], by the [here name the company or other promoters of the undertaking], incorporated [or constituted] by the said Act, do hereby convey to the said company [or other description], their successors and assigns, all [describing the premises to be conveyed], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said Act empowered to convey, to hold the premises to the said company [or other description], their successors and assigns, for ever, according to the true intent and meaning of the said Act. In witness whereof I have hereunto set my hand and seal, the day of in the year of our Lord .

## SCHEDULE (B.).

[Section 81.]

## FORM OF CONVEYANCE ON CHIEF RENT.

I , of , in consideration of the rent-charge to be paid to me, my heirs and assigns, as hereinafter mentioned, by "the promoters of the undertaking" [naming them], incorporated [or constituted] by virtue of the [here name the special Act], do hereby convey to the said company [or other description], their successors and assigns, all [describing the premises to be conveyed], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [or other description], their successors and assigns, for ever, according to the true intent and meaning of the said Act, they the said company [or other description], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of , by equal quarterly [or half-yearly, as agreed upon] portions, henceforth, on the [stating the days], clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the day of in the year of our Lord .

As to these forms of conveyance, see s. 81, ante, p. 199.

## [SCHEDULE (C.).

## FORM OF CONVICTION.

*to wit.*

*Be it remembered, that on the       day of       in the year of our  
 Lord       A. B. is convicted before us C., D., two of Her Majesty's  
 justices of the peace for the county of       [here describe the offence  
 generally, and the time and place when and where committed],  
 contrary to the [here name the special Act]. Given under our hands  
 and seals, the day and year first above written.*

*C., D.]*

This is the schedule referred to in s. 144, which section with this  
 schedule was repealed by the Statute Law Revision Act, 1892. See note  
 to s. 136, *ante*, p. 270.

# THE RAILWAYS CLAUSES CONSOLIDATION ACT, 1845.

( 8 & 9 VICT. c. 20. )

*An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the making of railways.*

[8th May 1845.]

[Whereas it is expedient to comprise in one general Act sundry provisions usually introduced into Acts of Parliament authorising the construction of railways, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: and whereas a Bill is now pending in Parliament, intituled *An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the taking of lands for undertakings of a public nature, and which is intended to be called "The Lands Clauses Consolidation Act, 1845"*: May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, that] (a) this Act shall apply to every railway which shall by any Act which shall hereafter be passed be authorised to be constructed, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act.

Operation  
of this Act  
confined to  
future  
railways.

(a) The recital has been repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67). As to incorporation, see s. 5 of this Act, and cf. ss. 1, 5, *ante*, pp. 1 and 9, of the Lands Clauses Consolidation Act, 1845, and see the notes to these sections and to s. 80 of that Act, *ante*, p. 179.

This Act does not apply to purchases of land without minerals made under a repealed Act, which latter Act has been repealed by an Act incorporating this Act but providing that it shall not affect any conveyance under the

repealed Act, and therefore the compensation for the minerals will not be ascertainable under this Act (*London and North Western Rail. Co. v. Walker*, [1903] W. N. 104). **Sect. 1.**  
**NOTE.**

And with respect to the construction of this Act and of other Acts to be incorporated therewith, be it enacted as follows : (a) **Interpretations in this Act :**

(a) This heading includes ss. 2—5.

2. The expression "the special Act," used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the construction of a railway, and with which this Act shall be so incorporated as aforesaid ; and the word "prescribed," used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act ; and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used ; and the expression "the lands" shall mean the lands which shall by the special Act be authorised to be taken or used for the purposes thereof ; and the expression "the undertaking" shall mean the railway and works, of whatever description, by the special Act authorised to be executed. **"Special Act :"**  
**"Prescribed :"**  
**"The lands :"**  
**"The undertaking."**

*Cf.* this section with the similar provisions in s. 2 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 3.

3. The following words and expressions, both in this and the special Act, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction ; (that is to say,) **Interpretations in this and the special Act :**

Words importing the singular number only shall include the Number : plural number ; and words importing the plural number only shall include also the singular number : (a)

Words importing the masculine gender only shall include females : (a) **Gender :**

The word "lands" shall include messuages, lands, tenements, and hereditaments, of any tenure : (a) **"Lands :"**

The word "lease" shall include an agreement for a lease : (a) **"Lease :"**

The word "toll" shall include any rate or charge or other payment payable under the special Act for any passenger, animal, carriage, goods, merchandise, articles, matters, or things, conveyed on the railway : **"Toll :"**

The word "goods" shall include things of every kind conveyed upon the railway : **"Goods :"**

The word "month" shall mean calendar month : (a) **"Month :"**

**Sect. 3.****"Superior courts :"**

The expression "superior courts" shall mean her Majesty's superior courts of record at Westminster or Dublin, as the case may require : (a)

**"Oath :"**

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other person exempted by law from the necessity of taking an oath : (a)

**"County :"**

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town : (a)

**"The sheriff :"**

The word "sheriff" shall include under sheriff or other legally competent deputy ; and where any matter in relation to any lands is required to be done by any sheriff or clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate ; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate : (a)

**"The clerk of the peace :"****"Justice :"**

The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter ; and where such matter shall arise in respect of lands, being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter ; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together : (a)

**"Two justices :"****"Owner :"**

Where under the provisions of this or the special Act any notice shall be required to be given to the owner of any lands, or where any act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under

the provisions of this or the special Act, or any Act incorporated therewith, would be enabled to sell and convey lands to the company : (a) Sect. 3.

The expression "the company" shall mean the company or party which shall be authorised by the special Act to construct the railway : "The company :"

The expression "the railway" shall mean the railway and works by the special Act authorised to be constructed : "The railway :"

[The expression "the Board of Trade" shall mean the Lords of the Committee of her Majesty's Privy Council appointed for trade and foreign plantations :] (b) "Board of Trade :"

The expression "the bank" shall mean the Bank of England, where the same shall relate to moneys to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland where the same shall relate to moneys to be paid or deposited in respect of lands situate in Ireland : (a) "The bank :"

The expression "turnpike road" shall, when applied to any road in Ireland, include any road upon which her Majesty's mails are or shall be carried in mail carriages, or such other roads as the Commissioners of Public Works in Ireland shall consider to require arches of greater width or height than by this Act is required for public carriage roads : "Turnpike road,"  
Ireland.

The expression "surveyor," applied to a road or highway, shall as to railways in Ireland, include the county surveyor : "Surveyor,"  
Ireland.

The expression "overseers of the poor" when applied to Ireland, shall include the poor law guardians of the electoral division, and the clerk of the guardians of the union, through which such railway may pass. "Overseers of the poor,"  
Ireland.

(a) These definitions are the same as those in the Lands Clauses Consolidation Act, 1845, s. 3. See the notes thereto, *ante*, p. 5.

(b) The definition of the Board of Trade was repealed by the Statute Law Revision Act, 1891, but a similar definition is given in the Interpretation Act, 1889, s. 12, as applicable to all Acts.

**"The railway."**—The definition of a railway in this Act includes all works authorised to be constructed, and will, therefore, include stations, yards, offices, and warehouses, and all other works the company may be authorised to construct. A railway company will, accordingly, be justified in taking land for these purposes although only a small portion may be required for the line itself (*Cothor v. Midland Rail. Co.* (1848), 5 Rail. Cas. 187, p. 194).

The definition of a railway varies in the different Acts, but for the purpose of this subject the only other material definition is that of the Regulation of Railways Act, 1868, s. 2 of which defines a railway as meaning "the whole or any portion of a railway or tramway, whether worked by steam or otherwise."

**Sect. 4.**

Short title  
of the Act.

4. [*And be it enacted that,*] (a) in citing this Act in other Acts of Parliament and in legal instruments it shall be sufficient to use the expression "The Railways Clauses Consolidation Act, 1845."

(a) These words were repealed by the Statute Law Revision Act, 1891.

Form in  
which por-  
tions of this  
Act may be  
incorporated  
in other Acts.

5. And whereas it may be convenient in some cases to incorporate with Acts hereafter to be passed some portion only of the provisions of this Act : Be it therefore enacted, that for the purpose of making any such incorporation it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated, (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter,) shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

See as to incorporation the notes to s. 5 of the Lands Clauses Consolidation Act, 1845, which is *verbatim* the same as this section, *ante*, p. 9.

And with respect to the construction of the railway and the works connected therewith, be it enacted as follows :

Under this heading are included ss. 6—29.

The construction of the railway to be subject to the provisions of this Act and the Lands Clauses Consolidation Act.

6. In exercising the power given to the company by the special Act to construct the railway, and to take lands for that purpose, the company shall be subject to the provisions and restrictions contained in this Act and in the said Lands Clauses Consolidation Act ; and the company shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties, by reason of the exercise, as regards such lands, of the powers by this or the special Act, or any Act incorporated therewith, vested in the company ; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands Clauses Consolidation Act, for determining

questions of compensation with regard to lands purchased or taken under the provisions thereof ; and all the provisions of the said last-mentioned Act shall be applicable to determining the amount of any such compensation, and to enforcing the payment or other satisfaction thereof.

**"In exercising the power."**—It should be noted that when companies and other public bodies are authorised by special Act to execute certain works that the special Acts so authorising them are usually merely enabling Acts, and there are rarely provisions compelling the promoters to complete or to carry on the authorised undertaking. In the absence of such compulsory provisions a railway company will not be bound to serve notices to treat, and a *mandamus* will not lie to compel the company to proceed under the Act, even although part of the line may have been completed (*R. v. York and North Midland Rail. Co.* (1852), 1 E. & B. 178). The same principle has been applied to an act authorising trustees to make a ferry and roads thereto (*R. v. French* (1879), 4 Q. B. D. 507).

Undertakers will not, therefore, be ordered to construct a line of railway, although they may have entered into an agreement with a landowner when the Bill was before Parliament agreeing to take certain of his land at a fixed price to be paid at the date at which they began to execute the line (*Edinburgh, Perth and Dundee Rail. Co. v. Philip* (1857), 2 Macq. 514). Nor will they be compelled to specifically perform an agreement for the purchase of land which they had contracted to purchase for the purposes of the line, but which as they had relinquished the undertaking they no longer required (*Scottish North Eastern Rail. Co. v. Stewart* (1859), 3 Macq. 382).

And even where a railway company have made the line and opened it for traffic, they will not be bound to maintain and keep it open if there are no words in their Act requiring them so to do (*R. v. Great Western Rail. Co.* (1893), 69 L. T. 572).

In the earlier case of *R. v. Severn and Wye Rail. Co.* (1819), 2 B. & Ald. 646, the company were required by the special Act to execute the works. See this case explained in *R. v. Great Western Rail. Co.* (1893), 69 L. T. 572. For a provision requiring one part of a line to be completed before another is opened, see *Cromford and High Peak Rail. Co. v. Stockport, etc. Rail. Co.* (1857), 1 De G. & J. 326).

**"Full compensation for the value of the lands so taken or used."**—When land is taken, regard must be had in assessing the compensation to (1) the value of the land ; (2) the damage by reason of severance of the lands taken from other lands of the same owner held therewith ; and (3) any other injurious affection of such lands. See ss. 49 and 63 of the Lands Clauses Consolidation Act, 1845, and the notes to the latter section, *ante*, pp. 82 and 96. The same principles of compensation have been applied under the Lands Clauses Consolidation Act, 1845, and under this Act when land is taken.

As to compensation when land is merely used temporarily, see *infra*, ss. 30—44.

**"To take lands for that purpose."**—The purpose is the construction of the railway, and "railway" by the definition in s. 3 includes the works authorised to be constructed including stations, warehouses, offices, and other buildings mentioned in s. 16 of this Act (*Cotter v. Midland Rail. Co.* (1848), 5 Rail. Cas. 187).

Lands required for accommodation works (see ss. 16 and 68, *infra*, and notes thereto) are lands required for the purposes of "the undertaking" or

**Sect. 6.****NOTE.**

of "the railway," and may be taken compulsorily (*Wilkinson v. Hull, etc. Rail. and Dock Co.* (1882), 20 Ch. D. 323).

A company can only take such lands as they require for the undertaking, and it must be land that they are authorised to take. See notes to s. 18 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 30.

As to the temporary occupation of lands, see ss. 30—44.

The word "lands" here includes mines, so that if mines are required for the purposes of the undertaking the company may take them compulsorily under this section notwithstanding the provisions in this Act as to taking the surface only (*Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559), and if they are taken, compensation in respect thereof is payable in the same manner as in other cases (*Smith v. Great Western Rail. Co.* (1877), 3 App. Cas. 165).

Where a railway company are empowered to appropriate and use the subsoil under an owner's land without in any way disturbing the surface, they are thereby empowered to take "land," and cannot enter upon and remove this subsoil without complying with the provisions of the Lands Clauses Act (*Farmer v. Waterloo and City Rail. Co.*, [1895] 1 Ch. 527).

See also the definition of "Lands" in s. 3 of the Lands Clauses Consolidation Act, 1845, and the notes thereto, *ante*, p. 4.

**"For all damage sustained."**—This refers only to damage to land or to some interest in land, and does not include personal damages. The damage referred to in s. 16 is of the same nature as that under this section, and there would appear to be no substantial difference between the language of s. 68 of the Lands Clauses Consolidation Act, 1845, and s. 6 of this Act (*Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175, pp. 189, 197; and see *Hammersmith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171; *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243).

In one case where a house was injuriously affected a large claim for damage to the goods of the occupant was allowed under this section as being covered by the words "all damage sustained." It does not appear in what way they came to be injured, but it would seem that the injury to the goods was the result of injuriously affecting the house (*Knock v. Metropolitan Rail. Co.* (1868), L. R. 4 C. P. 131). If such injury was the direct and natural result of the injurious affection, damages in respect thereof might probably have been given under s. 68 of the Lands Clauses Consolidation Act, 1845. See note thereto, "The measure of compensation," *ante*, p. 128.

Errors and omissions in plans to be corrected.

**7.** If any omission, misstatement, or erroneous description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described on the plans or books of reference mentioned in the special Act, or in the schedule to the special Act, it shall be lawful for the company, after giving ten days notice to the owners of the lands affected by such proposed correction, to apply to two justices for the correction thereof; and if it shall appear to such justices that such omission, misstatement, or erroneous description arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission, and in what respect any such matter shall have been mis-stated or erroneously described; and such certificate shall be deposited with the clerks of the peace of the several counties in which the lands affected thereby shall be

situate, and shall also be deposited with the parish clerks of the several parishes in England, and with the postmasters of the post towns in or nearest to such parishes in Ireland, in which the lands affected thereby shall be situate; and such certificate shall be kept by such clerks of the peace, parish clerks, and postmasters respectively along with the other documents to which they relate; and thereupon such plan, book of reference, or schedule shall be deemed to be corrected according to such certificate; and it shall be lawful for the company to make the works in accordance with such certificate.

**Sect. 7.**

As the special Act authorises the company to take lands by reference to the plans and books of reference, it is most material that they should be accurate. See the Lands Clauses Consolidation Act, 1845, s. 18, note, *ante*, p. 33.

In rural districts having a parish council the certificate will now be deposited with the clerk to the parish council, or, if there is no clerk, with the chairman (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 17 (7)). The clerk of the peace in performing his duties in connection with the deposit of plans or documents, now acts under the direction of the county council, and "clerks of the county council" should now be read for "clerks of the peace" in the above section (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 83 (6)).

The intention of the legislature in regard to the plans and book of reference would appear to be that the land should be clearly identified, and the difficulty, intended to be corrected by this section, is the omission either of the land in the plan or of the owner in the book of reference which would render identification difficult, or the omission of the number or of the acreage. The description is not intended to be entirely accurate, and the absence of the names of intermediate leasees for a long term, will not prevent the company taking the land without having the omission corrected under this section (*Kemp v. West End of London, etc. Rail. Co.* (1855), 1 K. & J. 681).

8. It shall not be lawful for the company to proceed in the execution of the railway, unless they shall have previously to the commencement of such work deposited with the clerks of the peace of the several counties in or through which the railway is intended to pass a plan and section of all such alterations from the original plan and section as shall have been approved of by Parliament, on the same scale and containing the same particulars as the original plan and section of the railway, and shall also have deposited with the clerks of the several parishes in England, and the postmasters of the post towns in or nearest to such parishes in Ireland, in or through which such alterations shall have been authorised to be made, copies or extracts of or from such plans and sections as shall relate to such parishes respectively.

Works not to be proceeded with until plans of all alterations authorised by Parliament have been deposited.

Although cross sections may be shown on the plans, there is nothing in this Act to render them binding on the company, and, unless required by

**Sect. 8.** the special Act, the company may alter them without making the deposits mentioned in this section. See *R. v. Caledonian Rail. Co.* (1850), 16 Q. B. 19.  
**NOTE.**

Clerks of the peace, etc., to receive plans of alterations, and allow inspection.

9. The said clerks of the peace, parish clerks, and postmasters shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and shall retain the same, as well as the said original plans and sections, and shall permit all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from the same, in the like manner and upon the like terms and under the like penalty for default as is provided in the case of the original plans and sections by [*an Act passed in the first year of the reign of her present Majesty, intituled An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.*] (a)

7 Will. 4 & 1 Vict. c. 83.

(a) That Act is now called the Parliamentary Documents Deposit Act, 1837. See the Short Titles Act, 1892 (55 Vict. c. 10).

As to clerks of the peace and parish clerks, see note to s. 7, *ante*.

Copies of plans, etc., to be evidence.

10. True copies of the said plans and books of reference, or of any alteration or correction thereof, or extract therefrom, certified by any such clerk of the peace, which certificate such clerk of the peace shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Limiting deviation from datum line described on sections, etc.

11. In making the railway it shall not be lawful for the company to deviate from the levels of the railway, as referred to the common datum line described in the section approved of by Parliament, and as marked on the same, to any extent exceeding in any place five feet, or, in passing through a town, village, street, or land continuously built upon, two feet, without the previous consent in writing of the owners and occupiers of the land in which such deviation is intended to be made; or in case any street or public highway shall be affected by such deviation, then the same shall not be made without the like consent of the trustees or commissioners having the control of such street or public highway, or, if there be no such trustees or commissioners, without the like consent of two or more justices of the peace in petty sessions assembled for that purpose, and acting for the district in which such street or public highway may be situated, or without the like consent of the commissioners for any public sewers, or the pro-

prietors of any canal, navigation, gasworks, or waterworks, affected by such deviation : Provided always, that it shall be lawful for the company to deviate from the said levels to a further extent without such consent as aforesaid, by lowering solid embankments or viaducts, provided that the requisite height of headway as prescribed by Act of Parliament be left for roads, streets, or canals passing under the same : Provided also, that notice of every petty sessions to be holden for the purpose of obtaining such consent of two justices as is herein-before required shall, fourteen days previous to the holding of such petty sessions, be given in some newspaper circulating in the county, and also be affixed upon the door of the parish church in which such deviation or alteration is intended to be made, or, if there be no church, some other place to which notices are usually affixed.

Sect. 11.

Proviso.

Proviso.

In the case of railways whose Acts incorporate Part I. of the Railways Clauses Act, 1863 (26 & 27 Vict. c. 92), further powers of deviation from the line or level are allowed in the case of an arch, tunnel, or viaduct. See s. 4 thereof, *post*.

**"Town."**—Town in this section means a collection of inhabited houses so reasonably near that they may be said to be continuous, and it will include a space of open ground surrounded by continuous houses (*Elliot v. South Devon Rail. Co.* (1848), 2 Ex. 725). See also note "Town" in the notes to ss. 93 and 128 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 226 and 260.

12. Before it shall be lawful for the company to make any greater deviation from the level than five feet, or, in any town, village, street, or land continuously built upon, two feet, after having obtained such consent as aforesaid, it shall be incumbent on the company to give notice of such intended deviation by public advertisement, inserted once at least in two newspapers, or twice at least in one newspaper, circulating in the district or neighbourhood where such deviation is intended to be made, three weeks at least before commencing to make such deviation ; and it shall be lawful for the owner of any lands prejudicially affected thereby, at any time before the commencement of the making of such deviation, to apply to the Board of Trade, after giving ten days notice to the company, to decide whether, having regard to the interests of such applicants, such proposed deviation is proper to be made ; and it shall be lawful for the Board of Trade, if they think fit, to decide such question accordingly, and by their certificate in writing either to disallow the making of such deviation, or to authorise the making thereof, either simply, or with any such modification as shall seem proper to the Board of Trade ; and after any such certificate shall have been given by the Board

Public notice to be given previous to making greater deviations.

Power to the owners of adjoining lands to appeal to the Board of Trade against such deviations.

**Sect. 12.** of Trade it shall not be lawful for the company to make such deviation, except in conformity with such certificate.

Where a railway company were building an embankment to carry the line over a road and building it much more than five feet above the level within the meaning of this and s. 11, and had obtained the consent required by s. 11, but had not given the notice required by this section, on the application of an owner, who claimed that his house would be prejudicially affected, for an injunction, the court put the company on terms to take the opinion of the Board of Trade and to submit to such order as the court should thereafter make (*Pearce v. Wycombe Rail. Co.* (1852), 1 Dr. 244).

Arches,  
tunnels, etc.,  
to be made  
as marked  
on deposited  
plans.

**13.** Where in any place it is intended to carry the railway on an arch or arches or other viaduct, as marked on the said plan or section, the same shall be made accordingly; and where a tunnel is marked on the said plan or section as intended to be made at any place, the same shall be made accordingly, unless the owners, lessees, and occupiers of the land in which such tunnel is intended to be made shall consent that the same shall not be so made.

Under Acts incorporating Part I. of the Railways Clauses Act, 1863 (26 & 27 Vict. c. 92), deviations from the line or level may be made in the case of arches, viaducts and tunnels, and other engineering works may be substituted with the consent of the Board of Trade (s. 4, *post*). Prior to that statute the structures and works had to be executed according to the plans. See, for example, *Little v. Newport, etc. Rail. Co.* (1852), 12 C. B. 752; *Attorney-General v. Tewkesbury, etc. Rail. Co.* (1863), 32 L. J. Ch. 482.

Limiting  
deviations  
from  
gradients,  
curves, etc.

**14.** It shall not be lawful for the company to deviate from or alter the gradients, curves, tunnels, or other engineering works described in the said plan or section, except within the following limits, and under the following conditions; (that is to say,)

Subject to the above provisions in regard to altering levels, it shall be lawful for the company to diminish the inclination or gradients of the railway to any extent, and to increase the said inclination or gradients as follows; (that is to say,) in gradients of an inclination not exceeding one in a hundred, to any extent not exceeding ten feet per mile, or to any further extent which shall be certified by the Board of Trade to be consistent with the public safety, and not prejudicial to the public interest; and in gradients of or exceeding the inclination of one in a hundred, to any extent not exceeding three feet per mile, or to any further extent which shall be so certified by the Board of Trade as aforesaid:

It shall be lawful for the company to diminish the radius of any curve described in the said plan to any extent which shall

leave a radius of not less than half a mile, or to any further extent authorised by such certificate as aforesaid from the Board of Trade :

**Sect. 14.**

It shall be lawful for the company to make a tunnel, not marked on the said plan or section, instead of a cutting, or a viaduct instead of a solid embankment, if authorised by such certificate as aforesaid from the Board of Trade.

This section is only applicable to works on the line of railway itself and does not apply to collateral works, such as cross roads or bridges for carrying such roads over the line (*R. v. Caledonian Rail. Co.* (1850), 16 Q. B. 19, p. 31). There is, therefore, no restriction as to the powers of the company to alter the level of the approaches to a bridge over which a road was carried, provided the land affected is included in the plans and book of reference, and full satisfaction is made to the owners (*Beardmer v. London and North Western Rail. Co.* (1849), 1 Macn. & G. 112).

A bridge carrying the railway over a road is part of the line and is an engineering work within this section (*Attorney-General v. Tewkesbury Rail. Co.* (1863), 32 L. J. Ch. 482).

**15.** It shall be lawful for the company to deviate from the line delineated on the plans so deposited, provided that no such deviation shall extend to a greater distance than the limits of deviation delineated upon the said plans, nor to a greater extent in passing through a town, village, or lands continuously built upon than ten yards, or elsewhere to a greater extent than one hundred yards from the said line, and that the railway by means of such deviation be not made to extend into the lands of any person, whether owner, lessee, or occupier, whose name is not mentioned in the books of reference, without the previous consent in writing of such person, unless the name of such person shall have been omitted by mistake, and the fact that such omission proceeded from mistake shall have been certified in manner herein or in the special Act provided for in cases of unintentional errors in the said books of reference.

Lateral deviations.

**"To deviate."**—Deviation in its ordinary and natural sense and in the sense in which it has been used in Acts of Parliament, means shifting the work in its integrity from one site to another which may be deemed more suitable. It does not imply a right, not only to alter the situation of the work, but in doing so to dispense with part of it (*Herron v. Rathmines and Rathgar Improvement Commissioners*, [1892] A. C. 498, pp. 517, 518).

The expression "deviation" in this section is to be taken with reference to the line of railway only, and not to lands required for collateral purposes (*Doe d. Armitstead v. North Staffordshire Rail. Co.* (1851), 16 Q. B. 526, p. 537). Lands outside the limits of deviation may, therefore, be taken if required (*Crawford v. Chester and Holyhead Rail. Co.* (1847), 11 Jur. 917; *Finck v. London and South Western Rail. Co.* (1890), 44 Ch. D. 330; and see notes to s. 18 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 33).

**Sect. 15.****NOTE.**

**"From the line delineated."**—On the deposited plans, the ordinary mode is to lay down the line of railway by making a dark line along what is proposed to be the centre of the railway and then to make dotted lines outside to mark the limits of deviation, which limits are fixed. The deviation referred to in this section is from that dark line, *i.e.*, from the middle of the original line of railway, and in calculating that deviation the distance is measured from the middle line of the railway as actually laid down to the *medium filum rive* of the original railway as shown on the plan (*Doe d. Armitstead v. North Staffordshire Rail. Co.* (1851), 16 Q. B. 526; *Doe d. Payne v. Bristol and Exeter Rail. Co.* (1840), 6 M. & W. 320; *Finck v. London and South Western Rail. Co.* (1890), 44 Ch. D. 330, pp. 337, 338).

The power of deviation does not extend to the widening of an existing line; a company empowered to widen their line cannot make the widening one hundred yards from the existing line (*Finck v. London and South Western Rail. Co.* (1890), 44 Ch. D. 330).

An agreement made with a landowner as to making certain approaches to his property, in consideration of his not opposing the projected railway, will not prevent the company from deviating so that the line of approach will require to be altered (*Wood v. Staffordshire Rail. Co.* (1849), 1 Macn. & G. 278).

If the line is constructed beyond the limits of deviation, a landowner, on part of whose land the line beyond the limits is constructed, has no remedy by action in respect thereof if his lands are included in the parliamentary plans and are reasonably necessary for the completion of the company's works, unless he can show that he has suffered special damage. If the public are injured, the Attorney-General might apply to the court to restrain the deviation (*Finck v. London and South Western Rail. Co.* (1890), 44 Ch. D. 330, p. 350; and see *Watkins v. Great Northern Rail. Co.* (1851), 16 Q. B. 961).

If the company keep within the limits of deviation, an information will not lie at the suit of the Attorney-General to restrain them because of an apprehension that great inconvenience and risk will be caused to the public, unless the company can be shown to have used their powers capriciously (*Attorney-General v. Great Western Rail. Co.* (1866), 14 W. R. 726).

**"Town."**—See s. 11 of this Act, note, "Town," and see notes to ss. 93 and 128 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 227, 261.

Works to be  
executed.

**16.** Subject to the provisions and restrictions in this and the special Act, and any Act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith, hereinafter mentioned, to execute any of the following works; (that is to say,)

Inclined  
planes, etc.

They may make or construct in, upon, across, under, or over any lands, or any streets, hills, valleys, roads, railroads, or tramroads, rivers, canals, brooks, streams, or other waters, within the lands described in the said plans, or mentioned in the said books of reference or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits,

drains, piers, arches, cuttings, and fences, as they think proper ; **Sect. 16**

They may alter the course of any rivers not navigable, brooks, streams, or watercourses, and of any branches of navigable rivers, such branches not being themselves navigable, within such lands, for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, and divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, roads, streets, or ways, or raise or sink the level of any such rivers or streams, roads, streets, or ways, in order the more conveniently to carry the same over or under or by the side of the railway, as they may think proper ; Alteration of course of rivers, etc.

They may make drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway ; Drains, etc.

They may erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, engines, machinery, apparatus, and other works and conveniences, as they think proper ; Warehouses, etc.

They may from time to time alter, repair, or discontinue the before-mentioned works or any of them, and substitute others in their stead ; and Alterations and repairs.

They may do all other acts necessary for making, maintaining, altering, or repairing, and using the railway : General power.

Provided always, that in the exercise of the powers by this or the special Act granted the company shall do as little damage as can be, and shall make full satisfaction, in manner herein and in the special Act, and any Act incorporated therewith, provided, to all parties interested, for all damage by them sustained by reason of the exercise of such powers. Proviso as to damages.

**"For the purpose of constructing the railway."**—The powers given in this section are subject to the provisions as to making compensation for the land taken and for the damage caused by these works. If the lands are required for any of the purposes of this section the company may take them, provided they are lands authorised to be taken. Thus they may take lands outside the limits of deviation for the purpose of making a station (*Colther v. Midland Rail. Co.* (1848), 5 Rail. Cas. 187). They may take land within the limits of deviation for the purpose of making a communication by a line of rails between the railway and a river (*Sadd v. Maldon, etc. Rail. Co.* (1851), 6 Ex. 143), and for the purpose of making a new public footpath in substitution for an old one (*Rangeley v. Midland Rail. Co.* (1868), L. R. 3 Ch. 306). As to what lands are authorised to be taken, and as to what are the purposes of an undertaking, see notes to s. 18 of the Lands Clauses Consolidation Act, 1845, p. 30, *et seq.*

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If the company enter upon the land for the purpose of constructing any of the works before making compensation, they will be liable to be restrained by injunction (*Ramsden v. Manchester, etc. Rail. Co.* (1848), 1 Ex. 723; *Rangeley v. Midland Rail. Co.* (1868), L. R. 3 Ch. 306, and cases cited in the notes to s. 84 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 203).

**"Or the accommodation works."**—The accommodation works which a railway company are required to make will be found in s. 68, *post*. Lands required for accommodation works are lands required for the purposes of the railway, and the company may take lands compulsorily for such works (*Wilkinson v. Hull, etc. Railway and Dock Co.* (1882), 20 Ch. D. 323, and see *Beardmer v. London and North Western Rail. Co.* (1849), 1 Macn. & G. 112). If they have taken land for the purpose of the railway itself and afterwards use it for accommodation works, they will be entitled to retain it (*Lord Beauchamp v. Great Western Rail. Co.* (1868), L. R. 3 Ch. 745). The lands may be taken for accommodation purposes, even although the owner objects and does not desire the accommodation, if such accommodation is reasonably necessary (*Dorling v. Pontypool, etc. Rail. Co.* (1874), L. R. 18 Eq. 714).

**Sub-section I. — Construction in streets, etc.**—The first clause of this section is not limited by the second so as to prevent the company partially impeding the course of a navigable river, as the promoters are authorised to execute their works in navigable rivers. They cannot, however, permanently or temporarily, divert or alter the whole of such a river (*Abraham v. Great Northern Rail. Co.* (1851), 16 Q. B. 586).

Under similar provisions in a special Act a railway company was held entitled to make temporary bridges over a canal, and in so doing to drive piles into it for the purpose of taking earth over, although subsequent provisions dealing with bridges for carrying the railway over the canal prevented the company from doing anything to obstruct the navigation (*London and Birmingham Rail. Co. v. Grand Junction Canal* (1835), 1 Rail. Cas. 224). Notwithstanding provisions as to permanent bridges temporary ones may be erected if reasonably required (*Priestley v. Manchester and Leeds Rail. Co.* (1840), 2 Rail. Cas. 134).

**Sub-section II. — Diversion of roads and rivers.**—Although railway companies are authorised to divert roads and rivers "as they may think proper," the courts have construed the section as a whole. The works must be done for the purpose of constructing the railway, according to the beginning of the section, and they must be "necessary for making" the railway according to the last sub-section. The discretion vested in the railway company is limited by the fact that the diversion must be necessary and not merely more convenient or economical. Thus if a railway crosses the bend of a road in two places the company cannot divert the road and make it go alongside the railway and thereby cut off the bend merely to save the expense of taking the road under or over the railway (*R. v. Wycombe Rail. Co.* (1867), L. R. 2 Q. B. 310, and see the same principle in *Fenwick v. East London Rail. Co.* (1875), L. R. 20 Eq. 544, p. 550; *Morris v. Tottenham and Forest Gate Rail. Co.*, [1892] 2 Ch. 45; *Lamb v. North London Rail. Co.* (1869), L. R. 4 Ch. 522, 527; *London and North Western Rail. Co. v. Ogden District Council* (1899), 80 L. T. 401). In *Pugh v. Golden Valley Co.* (1879), 12 Ch. D. 274, FRY, J., applied the same principle, although apparently without approval, to a case where a railway company proposed to divert a river in order to obviate the necessity of crossing it twice with bridges. When a railway crosses a highway without diverting it, the crossing must be by bridge (see s. 46); but if the road must be diverted, either horizontally or vertically, the railway company may exercise their

option and carry the road alongside the railway to a level crossing if this method is as commodious to the public as crossing it by bridges (*Attorney-General v. Ely, etc. Rail. Co.* (1869), L. R. 4 Ch. 194, p. 200).

Where a railway company proposed to carry a road over the line by means of a square bridge which would necessitate the road being deviated, and it appeared that a skew bridge would carry the road over without deviation, the court granted an injunction restraining the company from impeding the course of the road, and directed the matter to be referred to a competent person to inquire and certify whether any deviation was necessary, and if so, how it might best be carried out (*Attorney-General v. Dorset Central Rail. Co.* (1860), 3 L. T. (N.S.) 608).

As to crossing roads and other interference therewith, see ss. 46—66, *infra*. A road may be permanently diverted, if necessary, for the construction of a railway (*Phillips v. London, Brighton and South Coast Rail. Co.* (1862), 4 Giff. 46), and if it is so diverted and a new road substituted, the old road will revert to the original owner (*Marquis of Salisbury v. Great Northern Rail. Co.* (1858), 28 L. J. C. P. 40).

A company may take land of an owner in order to divert a road so as to diminish the obstruction to his property, although the owner objects and does not desire the diversion, provided such diversion is reasonable (*Douling v. Pontypool, etc. Rail. Co.* (1874), L. R. 18 Eq. 714).

The remedy for a wrongful diversion of a road may be for a *mandamus* to compel the company to carry the road over the railway or the railway over the road (*R. v. Wycombe Rail. Co.* (1867), L. R. 2 Q. B. 310), or by an action for a declaration of the plaintiff's rights and an injunction that these rights shall not be infringed (*Pugh v. Golden Valley Rail. Co.* (1879), 12 Ch. D. 274), or by information at the suit of the Attorney-General, praying for an injunction and that the company may be ordered to make all necessary bridges and other works (*Attorney-General v. Ely, etc. Rail. Co.* (1869), L. R. 4 Ch. 194).

**Sub-section III.—Drains or conduits.**—Where a railway company had made an artificial cutting to carry away water coming on to their line by reason of their having tapped the subterranean source of a stream, a person who had rights in the original stream and afterwards used the water in the artificial cutting, was held not to have acquired any rights by prescription in the artificial stream nor as an accommodation work, as it was made for the benefit of the company (*McEvoy v. Great Northern Rail. Co.*, [1900] 2 I. R. 325).

**Sub-section V.—Alteration and repairs.**—The expression "from time to time" means that the railway company can alter their works, and substitute others at any time after the period has elapsed which has been fixed for the completion of the works. In so doing they may interfere with easements of adjoining owners, who however are entitled to be compensated. Thus, it was held by the Court of Appeal that a railway company can alter their station by removing a parcel office, and erecting a new one on a different site, and in so doing interfere with the ancient lights of private persons (*Emsley v. North Eastern Rail. Co.*, [1896] 1 Ch. 418). In a Scotch case before the Railway and Canal Commission it has been held that a railway company have no power under the similar provision in the Scotch Railway Clauses Act, to alter a bridge over their railway, on which is a public road vested in a local authority, without the consent of that authority (*Arbroath Corporation v. Caledonian Rail. Co.* (1898), 10 Ry. & Can. Traff. Cas. 252).

**"All other acts necessary."**—The works if they are to cause a nuisance or otherwise injure the property of neighbours must be necessary, and not merely convenient and more economical to the company. Thus the erection

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and working of a mortar mill causing a nuisance will be restrained by injunction, although the company can thereby make the mortar more cheaply than they can buy it (*Fenrick v. East London Rail. Co.* (1875), L. R. 20 Eq. 544), following the principles laid down in the cases as to diversions of roads.

Generally, however, where an Act of Parliament authorises the execution of certain works, that authority includes everything reasonably necessary for the execution of the works (*Harrison v. Southwark and Vauxhall Water Co.*, [1891] 2 Ch. 409).

A railroad joining the line of another company with the line being constructed for the purpose of more conveniently conveying material for constructing the new line is not "necessary" (*Morris v. Tottenham and Forset Gate Rail. Co.*, [1892] 2 Ch. 47).

"As little damage as can be."—This expression does not imply that the work when done shall cause as little damage as can be, but that in the execution of the work as little damage as possible shall be done (*R. v. East and West India Docks, etc. Rail. Co.* (1853), 2 E. & B. 466). If the works are not necessary, the mere fact that they have been done in such a way as to cause the least possible damage will be no answer to an action for injunction (*Fenrick v. East London Rail. Co.* (1875), L. R. 20 Eq. 544, p. 549). But if the works are necessary, it is left to the option of the company how they shall carry them out, and if they act with *bona fides* they will not be restrained, because they might have constructed works which would cause less inconvenience to private persons (*R. v. East and West India Dock Co.* (1853), 2 E. & B. 466; *Birmingham Waterworks Co. v. London and North Western Rail. Co.* (1861), 4 L. T. (N.S.) 398; *Attorney-General v. Ely, etc. Rail. Co.* (1869), L. R. 4 Ch. 194; *London, Brighton and South Coast Rail. Co. v. Truman* (1885), 11 App. Cas. 45). The same principle is applicable to all statutory undertakings (see, for example, *Roderick v. Aston Local Board* (1877), 5 Ch. D. 328), unless there is a limitation on the exercise of the power (*Metropolitan Asylum District v. Hill* (1881), 6 App. Cas. 193; and see cases cited in the notes to s. 17 of the Electric Lighting Act, 1882, *post*). But when lands are required for temporary purposes the owner may require the company to take other land as more convenient (ss. 31 and 35, *infra*).

*Subsidence.*—As the company have the option of determining what works they shall construct, they must in the construction do as little damage as can be, and must take steps to prevent injury to adjacent property. Thus, in making a tunnel, they ought to underpin, or take other means to prevent the subsidence of houses and buildings adjacent (*Freehold General Land Co. v. Metropolitan District Rail. Co.* (1866), 14 L. T. (N.S.) 96), and generally in making a railway the company ought to take reasonable precautions not to injure adjoining houses. If they do not take such precautions the court will grant an injunction restraining the negligent use of their powers, and will appoint a surveyor to report as to what is necessary to secure the premises, and will order an inquiry as to damages (*Biscoe v. Great Eastern Rail. Co.* (1873), L. R. 16 Eq. 636, and see cases cited in notes to s. 68 of the Lands Clauses Consolidation Act, 1845, under title "Remedy by action," *ante*, p. 117).

*Floods.*—The company must also execute their works so as to prevent damage by flooding, if they can do so by exercising proper caution (*Geddis v. Proprietors of Bann Reservoir* (1878), 3 App. Cas. 430; *Lawrence v. Great Northern Rail. Co.* (1851), 16 Q. B. 643; and see *Attorney-General v. Furness Rail. Co.* (1878), 38 L. T. (N.S.) 555). If in diverting a brook sufficient drains are not made, so that a mine is afterwards flooded, an

action will lie against the company (*Bagnall v. London and North Western Rail. Co.* (1861), 7 H. & N. 423).

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**Obstructing rivers.**—If under a special Act a company are authorised to make bridges over rivers or brooks, and there are no special provisions as to such bridges, the company will be restrained from erecting bridges of such height and dimensions as will interfere with the rights of the public or of private individuals, unless the railway cannot be constructed except by constructing such bridges (*Manser v. North Eastern Rail. Co.* (1841), 2 Rail. Cas. 380; *Coats v. Clarence Rail. Co.* (1830), 1 R. & M. 181).

**"Make full satisfaction."**—The principles of compensation for injuriously affecting land will be found in the notes to s. 68, *ante*, p. 115, of the Lands Clauses Consolidation Act, 1845; and see note to s. 6 of this Act, *supra*, p. 283.

**Power to repair accidents.**—It may be here noticed that the Railway Regulation Act, 1842 (5 & 6 Vict. c. 55), ss. 14, 15, gives power to railway companies to enter upon and to take land for the purpose of repairing accidents, and for purposes of safety, making full compensation in respect thereof.

#### THE RAILWAY REGULATION ACT, 1842.

14. And whereas it is essential for the public safety and also for the proper maintenance of railways in a state of efficiency for the public service, that railway companies should have the power in case of accidents or slips happening or being apprehended to their cuttings and embankments or other works, to enter upon the lands adjoining their respective railways for the purpose of repairing or renewing the same, and to do such works as may be necessary for the purpose: Be it therefore enacted, that it shall be lawful for the lords of the said committee (a) to empower any railway company, in case of any accident or slip happening or being apprehended to any cutting, embankment, or other work belonging to them, to enter upon any lands adjoining their railway for the purpose of repairing or preventing such accident, and to do such works as may be necessary for the purpose: Provided always, that in case of necessity it shall be lawful for any railway company to enter upon such lands, and do such works as aforesaid, without having obtained the previous sanction of the lords of the said committee (a); but in every such case such railway company shall, within forty-eight hours after such entry, make a report to the lords of the said committee, specifying the nature of such accident or apprehended accident, and of the works necessary to be done, and such powers shall cease and determine if the lords of the said committee (a) shall, after considering the said report, certify that their exercise is not necessary for the public safety: Provided also, that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of, and shall be executed with all possible dispatch; and full compensation shall be made to the owners and occupiers of such lands for the loss or injury or inconvenience sustained by them respectively by reason of such works, the amount of which compensation, in case of any dispute about the same, shall be settled in the same manner as cases of disputed compensation are directed to be settled by the Acts relating to the railway on which such works may become necessary: Provided always, that no land shall be taken permanently by any railway company for such works without a certificate from the lords of the said committee (a) as hereinafter described.

(a) The Board of Trade.

15. And whereas by various Acts relating to railways compulsory powers are given to railway companies of purchasing and taking lands for the compulsory powers of taking land

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for the purposes of railways extended, where thought necessary for safety by Board of Trade.

construction of such railways, and it is provided that such compulsory powers shall not be exercised after the expiration of certain limited periods from the passing of the said Acts: And whereas it is sometimes found necessary for the public safety that additional land should be taken after the expiration of such periods for the purpose of giving increased width to the embankments and inclination to the slopes of railways, or for making approaches to bridges or archways, or for doing such works for the repair or prevention of accidents as are hereinbefore described: Be it therefore enacted, that in every case in which the lords of the said committee shall certify that the public safety requires additional land to be taken by any railway company for such purposes as aforesaid, the compulsory powers of purchasing and taking land contained in the Act or Acts of such railway company, together with all the clauses and provisions relative thereto, shall, as regards such portion or portions of land as are mentioned in the certificate of the lords of the said committee, revive and be in full force for such further period as shall be mentioned in such certificate: Provided always, that any railway company applying to the lords of the said committee for any such certificate shall give fourteen days' notice in writing, in the manner prescribed by the Act or Acts of such company for serving notices on landowners, of their intention to make such application, to all the parties interested in such lands, or such of them as shall be known to the company, and shall state in such notice the particulars of the lands required; and if any of such parties interested shall apply within the said period of fourteen days to the lords of the said committee, such party shall be heard by them before any such certificate is given: Provided also, that where any such application shall have been made by any railway company to the lords of the said committee, upon which application any such certificate shall have been refused, the directors of such railway company shall, if required by the lords of the said committee, repay to the party resisting such application any expenses which he or they may have incurred in resisting such application.

Works below high-water mark not to be executed without the consent of the Lords of the Admiralty.

**17.** It shall not be lawful for the company to construct on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where and so far up the same as the tide flows and reflows, any work, or to construct any railway or bridge across any creek, bay, arm of the sea, or navigable river, where and so far up the same as the tide flows and reflows, without the previous consent of her Majesty [*her heirs and successors*] (a), to be signified in writing under the hands of two of the commissioners of her Majesty's woods, forests, land revenues, works, and buildings, and of the lord high admiral of the United kingdom of Great Britain and Ireland, or the commissioners for executing the office of lord high admiral aforesaid for the time being, to be signified in writing under the hand of the Secretary of the Admiralty, and then only according to such plan and under such restrictions and regulations as the said commissioners of her Majesty's woods, forests, land revenues, works, and buildings, and the said lord high admiral, or the said commissioners, may approve of, such approval being signified as last aforesaid; and where any such work, railway, or bridge shall

have been constructed it shall not be lawful for the company at any time to alter or extend the same without obtaining, previously to making any such alteration or extension, the like consents or approvals; and if any such work, railway, or bridge shall be commenced or completed contrary to the provisions of this Act, it shall be lawful for the said commissioners of her Majesty's woods, forests, land revenues, works, and buildings, or the said high admiral, or the said commissioners for executing the office of lord high admiral, to abate and remove the same, and to restore the site thereof to its former condition, at the cost and charge of the company; and the amount thereof may be recovered in the same manner as a penalty is recoverable against the company. **Sect. 17.**

(a) Repealed by the Statute Law Revision Act, 1891.

The above section is now to be read as if the name of the Board of Trade were inserted instead of the lord high admiral or the commissioners for executing that office (Harbours Transfer Act, 1862 (25 & 26 Vict. c. 69), ss. 2, 6).

18. It shall be lawful for the company, for the purpose of constructing the railway, to raise, sink, or otherwise alter the position of any of the watercourses, water pipes, or gas pipes belonging to any of the houses adjoining or near to the railway, and also the mains and other pipes laid down by any company or society who may furnish the inhabitants of such houses or places with water or gas, and also to remove all other obstructions to such construction, so as the same respectively be done with as little detriment and inconvenience to such company, society, or inhabitants as the circumstances will admit, and be done under the superintendence of the company to which such water pipes or gas pipes belong, and of the several commissioners or trustees or persons having control of the pavements, sewers, roads, streets, highways, lanes, and other public passages and places within the parish or district where such mains, pipes or obstructions shall be situate, or of their surveyor, if they or he think fit to attend, after receiving not less than forty-eight hours' notice for that purpose. Alteration of water and gas pipes, etc.

19. Provided always, that it shall not be lawful for the company to remove or displace any of the mains or pipes (other than private service pipes), syphons, plugs, or other works belonging to any such company or society, or to do anything to impede the passage of water or gas into or through such mains or pipes, until good and sufficient mains or pipes, syphons, plugs, and all other works necessary or proper for continuing the supply of water or gas as sufficiently as the same was supplied by the mains or pipes Company not to disturb pipes until they have laid down others.

**Sect. 19.** proposed to be removed or displaced, shall, at the expense of the company, have been first made and laid down in lieu thereof, and be ready for use, in a position as little varying from that of the pipes or mains proposed to be removed or displaced as may be consistent with the construction of the railway, and to the satisfaction of the surveyor or engineer of such water or gas company or society, or, in case of disagreement between such surveyor or engineer and the company, as a justice shall direct.

Pipes not to be laid contrary to any Act, and eighteen inches surface road to be retained.

**20.** It shall not be lawful for the company to lay down any such pipes contrary to the regulations of any Act of Parliament relating to such water or gas company or society, or to cause any road to be lowered for the purposes of the railway, without leaving a covering of not less than eighteen inches from the surface of the road over such mains or pipes.

Company to make good all damage.

**21.** The company shall make good all damage done to the property of the water or gas company or society by the disturbance thereof, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with the mains, pipes, or works of such water or gas company or society, or with the private service pipes of any person supplied by them with water.

When railway crosses pipes, company to make a culvert.

**22.** If it shall be necessary to construct the railway or any of the works over any mains or pipes of any such water or gas company or society, the company shall, at their own expense, construct and maintain a good and sufficient culvert over such main or pipe, so as to leave the same accessible for the purpose of repairs.

Penalty for obstructing supply of gas or water.

**23.** If by any such operations as aforesaid the company shall interrupt the supply of any water or gas they shall forfeit twenty pounds for every day that such supply shall be so interrupted, and such penalty shall be appropriated to the benefit of the poor of the parish in which such obstruction shall occur, in such manner as the overseers of the poor of the parish shall direct.

Penalty for obstructing construction of railway.

**24.** If any person wilfully obstruct any person acting under the authority of the company in the lawful exercise of their power in setting out the line of the railway, or pull up or remove any poles or stakes driven into the ground for the purpose of so setting out the line of the railway, or deface or destroy any marks made

for the same purpose, he shall forfeit a sum not exceeding five pounds for every such offence. **Sect. 24.**

Sections 25—28 deal with drainage of land in Ireland. Section 29 deals with manufactories in Ireland.

And with respect to the temporary occupation of lands near the railway during the construction thereof, be it enacted as follows :

This heading covers ss. 30—44.

**30.** Subject to the provisions herein and in the special Act contained, it shall be lawful for the company, at any time before the expiration of the period by the special Act limited for the completion of the railway, to enter upon and use any existing private road, being a road gravelled or formed with stones or other hard materials, and not being an avenue or a planted or ornamental road, or an approach to any mansion house, within the prescribed limits, if any, or, if no limits be prescribed, not being more than five hundred yards distant from the centre of the railway as delineated on the plans ; but before the company shall enter upon or use any such existing road they shall give three weeks' notice of their intention to the owners and occupiers of such road, and of the lands over which the same shall pass, and shall in such notice state the time during which, and the purposes for which, they intend to occupy such road, and shall pay to the owners and occupiers of such road, and of the lands through which the same shall pass, such compensation for the use and occupation of such road, either in a gross sum of money or by half-yearly instalments, as shall be agreed upon between such owners and occupiers respectively and the company, or in case they differ about the compensation the same shall be settled by two justices, in the same manner as any compensation not exceeding fifty pounds is directed to be settled by the said Lands Clauses Consolidation Act (a).

Company may occupy temporarily private roads within five hundred yards of the railway.

(a) See ss. 22, 24 of that Act, *ante*, pp. 48, 52.

**31.** It shall be lawful for the owners and occupiers of any such road, and of the lands over which the same passes, within ten days after the service of the aforesaid notice, by notice in writing to the company to object to the company making use of such road, on the ground that other roads, such as the company are hereinbefore authorised to use for the purposes aforesaid, or that some

Power to owners and occupiers of road and land to object that other roads should be taken.

**Sect. 31.**

public road would be more fitting to be used for the same ; and upon the objection being so made such proceedings may be had as are hereinafter mentioned with respect to lands temporarily occupied by the company in respect of which three weeks' notice is hereinafter required to be given (a), and in the same manner as if in the provisions relative to such proceedings the word road or roads, or the words road and the land over which the same passes, as the case may require, had been substituted in such provisions for the word lands (b).

(a) See ss. 32, 33.

(b) Sections 35—38.

Power to take temporary possession of land without previous payment of price.

**32.** Subject to the provisions herein and in the special Act contained, it shall be lawful for the company, at any time before the expiration of the period by the special Act limited for the completion of the railway, without making any previous payment, tender, or deposit, to enter upon any lands within the prescribed limits, or, if no limits be prescribed, not being more than two hundred yards distant from the centre of the railway as delineated on the plans, and not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted, and not being nearer to the mansion house of the owner of any such lands than the prescribed distance, or, if no distance be prescribed, then not nearer than five hundred yards therefrom, and to occupy the said lands so long as may be necessary for the construction or repair of that portion of the railway, or of the accommodation works connected therewith, hereinafter mentioned, and to use the same for any of the following purposes ; (that is to say,)

For the purpose of taking earth or soil by side cuttings therefrom ;

For the purpose of depositing spoil thereon ;

For the purpose of obtaining materials therefrom for the construction or repair of the railway or such accommodation works as aforesaid ; or

For the purpose of forming roads thereon to or from or by the side of the railway :

And in exercise of the powers aforesaid it shall be lawful for the company to deposit and also to manufacture and work upon such lands materials of every kind used in constructing the railway, and also to dig and take from out of any such lands any clay, stone, gravel, sand, or other things that may be found

**Sect. 32.**

therein useful or proper for constructing the railway or any such roads as aforesaid, and for the purposes aforesaid (a) to erect thereon workshops, sheds, and other buildings of a temporary nature: Provided always, that nothing in this Act contained shall exempt the company from an action for nuisance or other injury, if any, done in the exercise of the powers hereinbefore given to the lands or habitations of any party other than the party whose lands shall be so taken or used for any of the purposes aforesaid: Provided also, that no stone or slate quarry, brick field, or other like place, which at the time of the passing of the special Act shall be commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same, shall be taken or used by the company, either wholly or in part, for any of the purposes lastly hereinbefore mentioned.

**"For the purpose of forming roads."**—This does not include a railroad, and the company cannot take land for the purpose of connecting the main line of another railway temporarily with their own line for the purpose of bringing materials from such main line for the construction of their line (*Morris v. Tottenham and Forest Gate Rail. Co.*, [1892] 2 Ch. 47). In the same case it was also decided that the works for which land is taken must be necessary and not merely for saving expense to the company. *Cf.* s. 16, note, "All other acts necessary," *ante*, p. 293.

(a) **"For the purposes aforesaid."**—These words refer to the purposes specifically mentioned in this section and no other. They do not refer to purposes previously mentioned in the Act, as, for example, in s. 16. The temporary erection of a mortar mill could not, therefore, be justified under this section (*Fenwick v. East London Rail. Co.* (1875), L. R. 20 Eq. 544, p. 547).

Lands cannot be taken compulsorily and permanently for the purpose only of excavating materials (*Eversfield v. Mid-Sussex Rail. Co.* (1858), 3 De G. & J. 286).

**"An action of nuisance."**—These words do not limit the remedy of a person injured merely to a common law action for damages, although at the time when the Act was passed an application for an injunction could not be combined with it. An application to restrain may, therefore, be made in the Chancery Division (*Fenwick v. East London Rail. Co.* (1875), L. R. 20 Eq. 544, p. 549).

**33.** In case any such lands shall be required for spoil banks or for side cuttings, or for obtaining materials for the construction or repair of the railway, the company shall before entering thereon (except in the case of accident to the railway requiring immediate reparation) give three weeks' notice in writing to the owners and occupiers of such lands of their intention to enter upon the same for such purposes; and in case the said

Company to  
give notice  
previous  
to such  
temporary  
possession.

**Sect. 33.** lands are required for any of the other purposes hereinbefore mentioned the company shall (except in the cases aforesaid) give ten days' like notice thereof; and the company shall in such notices respectively state the substance of the provisions herein-after contained respecting the right of such owner or occupier to require the company to purchase any such lands, or to receive compensation for the temporary occupation thereof, as the case may be.

The notice should state for which of the purposes mentioned in s. 32 the land is wanted; a notice that it is wanted for these purposes or some one of them is not sufficient, as the landowner will be unable to object under s. 35 that other lands will be more fitting for the required purpose (*Poynder v. Great Northern Rail. Co.* (1847), 16 Sim. 3).

Service of notices on owners and occupiers of lands.

**34.** The said notice shall either be served personally on such owners and occupiers, or left at their last usual place of abode, if any such can after diligent inquiry be found; and in case any such owner shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

*Cf.* s. 19 of the Lands Clauses Consolidation Act, 1845, and notes thereto, *ante*, p. 44.

Power to owner to object that other lands ought to be taken.

**35.** In any case in which a notice of three weeks is hereinbefore required to be given it shall be lawful for the owner or occupier of the lands therein referred to, within ten days after the service of such notice, by notice in writing to the company, to object to the company making use of such lands, either on the ground that the lands proposed to be taken for the purposes aforesaid, or some part thereof, or of the materials contained therein, are essential to be retained by such owner in order to the beneficial enjoyment of other neighbouring lands belonging to him, or on the ground that other lands lying contiguous or near to those proposed to be taken would be more fitting to be used for such purposes by the company; and upon objection being so made such proceedings may be had as hereinafter mentioned.

Power to two justices to order that the lands and materials shall not be taken.

**36.** If the objection so made be on the ground that the lands proposed to be taken, or some part thereof, or of the materials contained therein, are essential to be retained by the owner in order to the beneficial enjoyment of other neighbouring lands belonging to him, it shall be lawful for any justice, on the application of such owner, to summon the company to appear before two

justices (a) at a time and place to be named in the summons, such time not being later than the expiration of the said twenty-one days' notice ; and on the appearance of the company, or in their absence, upon proof of due service of the summons, it shall be lawful for such justices to inquire into the truth of such ground of objection ; and if it appear to such justices that for some special reason, to be stated in the order after mentioned, the lands so proposed to be taken, or any part thereof, or of the materials contained therein, are essential to be retained by the owner of such lands in order to the beneficial enjoyment of other neighbouring lands belonging to him, and ought not therefore to be taken or used by the company, it shall be lawful for such justices, by writing under their hands, to order that the lands so proposed to be taken, or some part thereof, or of the materials contained therein, to be specified in such order, shall not be taken or used by the company ; and after service of such order on the company it shall not be lawful for them to take or use, without the previous consent in writing of the owner thereof, any of the lands or materials which by such order they are ordered not to take or use.

**Sect. 36.**

(a) See definition and notes to s. 3 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 4.

**37.** If the objection so made as aforesaid be on the ground that other lands lying contiguous to those proposed to be taken, and being sufficient in quantity, and such as the company are hereinbefore authorised to use for the purposes aforesaid, would be more fitting to be used by the company, and if in such case the company shall refuse to occupy such other lands in lieu of those mentioned in the notice, it shall be lawful for any justice, on the application of such owner or occupier, to summon the company and the owners and occupiers of such other lands to appear before two justices at a time and place to be named in such summons, such time not being more than fourteen days after such application nor less than seven days from the service of such summons ; and on the appearance of the parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to determine summarily which of the said lands shall be used by the company for the purposes aforesaid, and to authorise the company to occupy and use the same accordingly.

Power to justices to order other lands to be taken.

**38.** If in the case last mentioned it shall appear to such justices upon the inquiry before them, that the lands of any other

Power to the justices to summon other owners before them.

**Sect. 38.** party not summoned before them, being sufficient in quantity, and such as the company are hereinbefore authorised to take or use for the purposes aforesaid, would be more fitting to be used by the company than the lands of the person who shall have been so summoned as aforesaid, it shall be lawful for the said justices to adjourn such inquiry, and to summon such other person to appear before them at any time, not being more than fourteen days from such inquiry nor less than seven days from the service of such summons; and on the appearance of the parties, or in the absence of any of them, on proof of due service of the summons, it shall be lawful for such justices to determine finally which lands shall be used for the purposes aforesaid, and to authorise the company to occupy and use the same accordingly.

The company  
to give  
sureties if  
required.

**39.** Before entering, under the provisions hereinbefore contained, upon any such lands as shall be required for spoil banks or for side cuttings, or for obtaining materials or forming roads as aforesaid, the company shall, if required by the owner or occupier thereof, seven days at least before the expiration of the notice to take such lands as hereinbefore mentioned, find two sufficient persons, to be approved of by a justice, in case the parties differ, who shall enter into a bond to such owner or occupier in a penalty of such amount as shall be approved of by such justice, in case the parties differ, conditioned for the payment of such compensation as may become payable in respect of the same in manner herein mentioned.

*Cf. s. 85 of the Lands Clauses Consolidation Act and notes thereto, ante, p. 205.*

Company to  
separate the  
lands before  
using them.

**40.** Before the company shall use any such lands for any of the purposes aforesaid they shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the lands adjoining thereto, with such gates as may be required by the said owner or occupier for the convenient occupation of such lands, and shall also, to all private roads used by them as aforesaid, put up fences and gates in like manner, in all cases where the same may be necessary to prevent the straying of cattle from or upon the lands traversed by such roads, and in case of any difference between the owners or occupiers of such roads and lands and the company as to the necessity for such fences and gates, such fences and gates as any two magistrates shall deem necessary for the purposes aforesaid, on application being made to them in like manner as hereinbefore is provided in respect to the use of such roads.

*Cf. s. 68 of this Act, infra, p. 320.*

**41.** If any land shall be taken or used by the company, **Sect. 41.**  
 under the provisions of this or the special Act, for the purpose of  
 getting materials therefrom for the construction or repair of the  
 railway, or the accommodation works connected therewith, they  
 shall work the same in such manner as the surveyor or agent of  
 the owner of such land shall direct, or, in case of disagreement  
 between such surveyor or agent and the company, in such manner  
 as any justice shall direct, on the application of either party, after  
 notice of the hearing the application shall have been given to the  
 other party.

Lands taken  
for getting  
materials,  
etc., to be  
worked as  
the surveyor  
or owner  
may direct.

**42.** In all cases in which the company shall in exercise of the  
 powers aforesaid enter upon any lands for the purpose of making  
 spoil banks or side cuttings thereon, or for obtaining therefrom  
 materials for the construction or repair of the railway, it shall be  
 lawful for the owners or occupiers of such lands, or parties having  
 such estates or interests therein as, under the provisions in the  
 said Lands Clauses Consolidation Act mentioned, would enable  
 them to sell or convey lands to the company, at any time during  
 the possession of any such lands by the company, and before such  
 owners or occupiers shall have accepted compensation from the  
 company in respect of such temporary occupation, to serve a  
 notice in writing on the company requiring them to purchase the  
 said lands, or the estates and interests therein capable of being  
 sold and conveyed by them respectively ; and in such notice such  
 owners or occupiers shall set forth the particulars of such their  
 estate or interest in such lands, and the amount of their claim in  
 respect thereof ; and the company shall thereupon be bound to  
 purchase the said lands, or the estate and interest therein capable  
 of being sold and conveyed by the parties serving such notice.

Owners of  
lands may  
compel  
company to  
purchase  
lands so  
temporarily  
occupied.

As to persons enabled to sell and convey, see s. 7 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 16 ; and as to particulars of their estate or interest, see ss. 18 and 21 and notes, *ante*, pp. 28, 45.

Where a company had excavated soil on the land of another, and some years after the claim in respect thereof was referred to arbitration, and the claim was stated in the submission to be "for lands taken and used and otherwise injured," and the arbitrators found the land had been taken and used, and awarded a sum as purchase money, which was paid to the landowner, it was held that the land had thereby become the property of the company (*In re Belfast Central Rail. Co., Ex parte Macrory* (1870), 19 W. R. 238).

**43.** In any of the cases aforesaid, where the company shall  
 not be required to purchase such lands, and in all other cases  
 where they shall take temporary possession of lands by virtue of

Compensa-  
tion to be  
made for  
temporary  
occupation.

**Sect. 43.** the powers herein or in the special Act granted, it shall be incumbent on the company, within one month after their entry upon such lands, upon being required so to do, to pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of their so taking possession of his lands, and shall also from time to time during their occupation of the said lands pay half-yearly to such occupier, or to the owner of the lands, as the case may require, a rent, to be fixed by two justices in case the parties differ, and shall also within six months after they shall have ceased to occupy the said lands, and not later than six months after the expiration of the time by the special Act limited for the completion of the railway, pay to such owner and occupier, or deposit in the bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage or injury that may have been sustained by them by reason of the exercise, as regards the said lands, of the powers herein or in the special Act granted, including the full value of all clay, stone, gravel, sand, and other things taken from such lands.

Compensation to be ascertained under the Lands Clauses Act.

**44.** The amount and application of the purchase money and other compensation payable by the company in any of the cases aforesaid shall be determined in the manner provided by the said Lands Clauses Consolidation Act for determining the amount and application of the compensation to be paid for lands taken under the provisions thereof.

See Lands Clauses Consolidation Act, 1845, s. 21, and notes, *ante*, p. 45; and as to application, ss. 69—80, *ante*, pp. 131 *et seq.*

Land to be taken for additional stations, etc.

**45.** And be it enacted, that it shall be lawful for the company, in addition to the lands authorised to be compulsorily taken by them under the powers of this or the special Act, to contract with any party willing to sell the same for the purchase of any land adjoining or near to the railway, not exceeding in the whole the prescribed number of acres for extraordinary purposes; (that is to say,)

For the purpose of making and providing additional stations, yards, wharfs, and places for the accommodation of passengers, and for receiving, depositing, and loading or unloading goods or cattle to be conveyed upon the railway, and for the erection of weighing machines, toll houses, offices, warehouses, and other buildings and conveniences:

For the purpose of making convenient roads or ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway. Sect. 45.

In purchasing lands for additional purposes a railway company are not bound to choose a site which may be more convenient to other persons, and the fact that a yard for cattle traffic is established on such land and causes annoyance to the occupiers of adjoining houses, will not entitle such occupiers to an injunction to restrain the company from carrying on their cattle traffic on that land (*London, Brighton and South Coast Rail. Co. v. Truman* (1885), 11 App. Cas. 45; cf. *Foster v. London, Chatham and Dover Rail. Co.* (1894), 64 L. J. Q. B. 65). It is now usual to insert in the special Act a proviso that land acquired for additional purposes shall not be used in such a manner as to cause a nuisance.

Where land was conveyed to a railway company for the construction of a station house and other works and conveniences necessary and convenient for passenger and goods traffic, with a covenant to re-convey at the end of five years, any part not so used, it was held that a part used by the station-master as garden ground, and a part used by the porters, and a small part used by a coal dealer to store coal brought by the railway, were parts used for works, and that they were being used as provided, and that the company were not bound to re-convey (*Harris v. London and South Western Rail. Co.* (1889), 60 L. T. (N.S.) 392).

And with respect to the crossing of roads, or other interference therewith, be it enacted as follows :

Under this heading are ss. 46—67.

**46.** If the line of the railway cross any turnpike road or public highway, then (except where otherwise provided by the special Act) either such road shall be carried over the railway, or the railway shall be carried over such road, by means of a bridge, of the height and width and with the ascent or descent by this or the special Act in that behalf provided; and such bridge, with the immediate approaches, and all other necessary works connected therewith, shall be executed and at all times thereafter maintained at the expense of the company: Provided always, that, with the consent of two or more justices in petty sessions, as after mentioned, it shall be lawful for the company to carry the railway across any highway, other than a public carriage road, on the level. Crossing of roads.

“If . . the railway cross.”—The company have power to deviate the road when it is necessary for the construction of the line. See s. 16, and notes thereto, *ante*, p. 290.

“Public highway.”—This section does not of itself require that a footpath shall be carried under or over a railway. The expression “public highway,” when read with the following sections, means a carriageway, because there is no subsequent provision dealing with carrying a footpath

**Sect. 46****NOTE.**

over or under a road. Section 61 deals with footpaths crossing on the level. A railway company are not, therefore, bound to carry a footpath over or under the railway, unless there is a provision to that effect in the special Act (*Dartford Rural District Council v. Berley Heath Rail. Co.*, [1898] A. C. 210, affirming *C. A.*, before which the case is reported as *R. v. Berley Heath Rail. Co.*, [1896] 2 Q. B. 74).

“**Except where otherwise provided.**”—A provision in a special Act, authorising a company to take a road over a railway on the level, will not prevent them taking the railway under the road and raising the road for that purpose, and if a person suffer by reason of the road being raised, his remedy is for compensation for his premises being injuriously affected, and not for an injunction to restrain the company from making their railway in this way (*Warden of Dover v. London, Chatham and Dover Rail. Co.* (1861), 3 De G. F. & J. 559).

“**Either such road shall be carried.**”—The company have an option as to how the line will cross the road, and if a *mandamus* order them to carry the road over the railway by means of a bridge it will be invalid unless it appears upon the face of the record that the company has rendered it impossible to carry the railway over the road (*R. v. South Eastern Rail. Co.* (1853), 4 H. L. 471).

“**Maintained at the expense of the company.**”—When a railway company carries a road over the railway by a bridge it is bound to keep both bridge and road and all the approaches thereto in repair, including not only the structure of the bridge and the approaches, but the metalling of the road on both (*North Staffordshire Rail. Co. v. Dale* (1858), 8 E. & B. 836; *Trustees of Newcastle Roads v. North Staffordshire Rail. Co.* (1860), 5 H. & N. 160). These cases were followed and approved by the House of Lords in *Lancashire and Yorkshire Rail. Co. v. Bury* (1889), 14 App. Cas. 417. Where the railway is taken over the road and the road lowered for the purpose, it has been held that the company is not bound to keep the slope of the road in repair, as the road in such a case is not one of the approaches to the bridge (*London and North Western Rail. Co. v. Skerton* (1864), 5 B. & S. 559, following with some doubt two Irish cases, *Waterford and Limerick Rail. Co. v. Kearney* (1860), 12 Ir. C. L. 224; *Fosberry v. Waterford and Limerick Rail. Co.* (1862), 13 Ir. C. L. 494; and see *per Lord HERSCHELL*, in *Lancashire and Yorkshire Rail. Co. v. Bury* (1889), 14 App. Cas. 417, p. 421). In a Scotch case it was decided that a railway company was not bound to keep in repair substituted roads (*Magistrates of Perth v. Earl of Kinnoull* (1872), 10 Sc. Sess. Cas. 874; and see *London and North Western Rail. Co. v. Ogden District Council* (1899), 80 L. T. 401).

“**Consent of two or more justices.**”—For the procedure as to obtaining this consent, see *infra*, ss. 59 and 60. As to two justices, see note to s. 3 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 8.

Provision in cases where roads are crossed on a level.

**47.** If the railway cross any turnpike road or public carriage road on a level, the company shall erect and at all times maintain good and sufficient gates across such road, on each side of the railway, where the same shall communicate therewith, and shall employ proper persons to open and shut such gates; and such gates shall be kept constantly closed across such road on both sides of the railway, except during the time when horses, cattle,

carts, or carriages passing along the same shall have to cross such railway ; and such gates shall be of such dimensions and so constructed as when closed to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway ; and the person intrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts, or carriages shall have passed through the same, under a penalty of forty shillings for every default therein : Provided always, that it shall be lawful for the Board of Trade, in any case in which they are satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway, to order that such gates shall be kept so closed, instead of across the road, and in such case such gates shall be kept constantly closed across the railway, except when engines or carriages passing along the railway shall have occasion to cross such road, in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

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By the Railways Clauses Act, 1863, s. 7, *post*, the Board of Trade has power to require that a bridge may be made to take the place of a level crossing at any time if it appears to them necessary for the public safety ; but the Board of Trade cannot enforce this by *mandamus* against a company which has exhausted its powers of raising money and has leased its line in perpetuity to another company (*Re Bristol and North Somerset Rail. Co.* (1877), 3 Q. B. D. 10).

**48.** Where the railway crosses any turnpike road on a level adjoining to a station, all trains on the railway shall be made to slacken their speed before arriving at such turnpike road, and shall not cross the same at any greater rate of speed than four miles an hour ; and the company shall be subject to all such rules and regulations with regard to such crossings as may from time to time be made by the Board of Trade.

As to crossing  
of turnpike  
roads  
adjoining  
stations.

An injunction will be granted to restrain a breach of this section in an action by the Attorney-General on the relation of the road authority, and it is no answer to the application that the general public are not thereby inconvenienced (*Attorney-General v. London and North Western Rail. Co.*, [1900] 1 Q. B. 78).

**49.** Every bridge to be erected for the purpose of carrying the railway over any road shall (except where otherwise provided by the special Act) be built in conformity with the following regulations ; (that is to say,)

Construction  
of bridges  
over roads.

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty-five feet if the arch be over

**Sect. 49.**

a turnpike road, and of twenty-five feet if over a public carriage road, and of twelve feet if over a private road:

The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road, and fifteen feet for a space of ten feet if over a public carriage road; and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet:

The clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private carriage road:

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a turnpike road, one foot in twenty feet if over a public carriage road, and one foot in sixteen feet if over a private carriage road, not being a tramroad or railroad, or if the same be a tramroad or railroad the descent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special Act.

Where a company contracted with a landowner to make a suitable bridge over a street as then planned or intended, and the plan showed that the street was intended to be forty-two feet wide, it was held that the company could not make a bridge of twenty-five feet under this section, but must make a bridge with an arch of forty-two feet. If a company desires to take the benefit of this section in such a contract, it should be referred to in the contract (*Clarke v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1861), 1 J. & H. 631).

If the company, in order to make the bridge of the height required by this section, lowers the road, so that it is liable to be flooded, an injunction will be granted to restrain it in a suit at the instance of the Attorney-General (*Attorney-General v. Furness Rail. Co.* (1878), 47 L. J. Ch. 776).

Construction  
of bridges  
over railway.

**50.** Every bridge erected for carrying any road over the railway shall (except as otherwise provided by the special Act) be built in conformity with the following regulations; (that is to say,)

There shall be a good and sufficient fence on each side of the bridge of not less height than four feet, and on each side of the immediate approaches of such bridge of not less than three feet:

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a turnpike road, and twenty-five feet if a public carriage road, and twelve feet if a private road:

**Sect. 50.**

The ascent shall not be more than one foot in thirty feet if the road be a turnpike road, one foot in twenty feet if a public carriage road, and one foot in sixteen feet if a private carriage road, not being a tramroad or railroad, or if the same be a tramroad or railroad the ascent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special Act.

**51.** Provided always, that in all cases where the average available width for the passage of carriages of any existing roads within fifty yards of the points of crossing the same is less than the width hereinbefore prescribed for bridges over or under the railway the width of such bridges need not be greater than such average available width of such roads, but so nevertheless that such bridges be not of less width, in the case of a turnpike road or public carriage road, than twenty feet: Provided also, that if at any time after the construction of the railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the company shall be bound, at their own expense, to increase the width of the said bridge to such extent as they may be required by the trustees or surveyors of such road, not exceeding the width of such road as so widened, or the maximum width herein or in the special Act prescribed for a bridge in the like case over or under the railway.

The width of the bridges need not exceed the width of the road in certain cases.

Where a bridge was made so that the average available breadth for carriages was unaltered, but the piers projected upon and narrowed the footpaths by the side of the road, it was held that the section had been complied with, as the footpaths could not be taken as part of the turnpike road over which the arch was to be thrown (*R. v. Rigby* (1850), 19 L. J. Q. B. 153).

**52.** Provided also, that if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same, or the inclination of such portion of any road as may require to be altered, or for which another road shall be substituted, shall be steeper than the inclination hereinbefore required to be preserved by the company, then the company may carry any such road over or under the railway, or may construct such altered or substituted road, at an inclination not steeper than the said mesne inclination of the road so to be crossed, or of the road so requiring to be altered, or for which another road shall be substituted.

Existing inclinations of roads crossed or diverted need not be improved.

**53.** If, in the exercise of the powers by this or the special Act granted, it be found necessary to cross, cut through, raise, sink, or

Before roads interfered with others to be substituted

**Sect. 53.** use any part of any road, whether carriage road, horse road, tram-road, or railway, either public or private, so as to render it impassable for or dangerous or extraordinarily inconvenient to passengers or carriages, or to the persons entitled to the use thereof, the company shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with, and shall at their own expense maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with, or as nearly so as may be.

**"Dangerous or extraordinarily inconvenient."**—Where a railway company while constructing a railway laid down rails along a portion of the highway and ran locomotives and trucks along it, this temporary line proceeding for some distance along one side of the road and leaving the other side for passengers and vehicles, and no fence separating the line from the remainder of the highway, it was held that, although the evidence did not show that the public had been inconvenienced yet that the road had been rendered "dangerous or extraordinarily inconvenient," and a perpetual injunction was granted restraining the company from using the highway until it had made a substituted road (*Attorney-General v. Widnes Rail. Co.* (1874), 22 W. R. 607).

**"Cause a sufficient road to be made."**—This section has been held to apply to a permanent diversion as well as to a temporary one, and where the new permanent road made in substitution for the old one was dangerous, the court ordered an injunction to restrain the company using the old road, but gave the company time to make such alterations on the new road as to render it safe (*Attorney-General v. Barry Dock and Rail. Co.* (1887), 35 Ch. D. 573).

Where the special Act authorised a railway company to take part of a tram line for the purpose of making their railway by changing the tram line into a railway, the court held that this section did not apply, and that they were not bound to make a substituted tramroad (*Tanner v. South Wales Rail. Co.* (1855), 5 E. & B. 618).

Where a railway company doubled a branch line and connected it with the main line so as to render a level crossing unfit for use by a farmer for whose farm it had been made as an accommodation work, it was held under the Scotch Act that this did not amount to an interference within the meaning of this section (*Pollock v. North British Rail. Co.* (1901), 3 Ct. of Sess. Cas. (5th ser.) 727). If there is an existing road alleged to be as convenient as any substituted road, the company will not be relieved from making a substituted road, and if an injunction issues to restrain the company obstructing the road until a substituted road be made, the making of a level crossing over the original road will constitute a breach of the injunction (*Attorney-General v. Great Northern Rail. Co.* (1850), 4 De G. & Sm. 75).

The substituted road must be as convenient as possible for everybody, and if a company has power to stop up and divert a public road so as to cut off all access to and from property previously bounded by the public road, the owner of the property is entitled to a substituted road although the company may have made a substituted road convenient to the general public (*Hay v. City of Glasgow Union Rail. Co.* (1874), 1 Sc. Sess. (4th ser.), p. 1191).

A railway company cannot obstruct a private way without compensation,

and an Act which enables a company without compensation to extinguish certain footways without compensation will be construed to apply to public ones only (*Wells v. London, Tilbury, and Southend Rail. Co.* (1877), 5 Ch. D. 126). If a company wrongfully obstructs a private branch railway an action will lie for any special damage caused to the owner as well as for penalties under s. 54 if the company interferes with it without substituting another; but if an owner contract with a tenant to connect the branch line with the main line if the company fails or refuses to do so, and the company does fail and the tenant recovers in an action damages under the agreement, the landowner cannot recover these against the company as they are damages due to breach of his agreement and not the natural result of the company's neglect (*Caledonian Rail. Co. v. Colt* (1860), 3 Macq. 833).

# Sect. 53.

## NOTE.

**Enforcing the section.**—If the injury affects the public the section may be enforced by an application for an injunction at the suit of the Attorney-General (see cases, *supra*), or by indictment (*R. v. Great North of England Rail. Co.* (1846), 9 Q. B. 315; and *cf. R. v. Birmingham and Gloucester Rail. Co.* (1842), 3 Q. B. 223). A statutory duty may also be enforced by *mandamus*. See *R. v. Birmingham and Gloucester Rail. Co.* (1841), 2 Q. B. 47; *Re Bristol and Somerset Rail. Co.* (1877), 3 Q. B. D. 10. It is not a sufficient return to a *mandamus* to state that the company cannot comply without purchasing more land, and that the powers of compulsory purchase have expired (*R. v. Birmingham and Gloucester Rail. Co.* (1841), 2 Q. B. 47).

As to recovering penalties from the company, see s. 54; and as to the right of action by a private individual, see s. 55.

**54.** If the company do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid, they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted; and such penalty shall be paid to the trustees, commissioners, surveyor, or other person having the management of such road, if a public road, and shall be applied for the purposes thereof, or in case of a private road the same shall be paid to the owner thereof, and every such penalty shall be recoverable with costs by action in any of the superior courts. Penalty for not substituting a road.

The "owner" of a private road for the purposes of this section is the person for the time being in possession; a lessee would, therefore, be the person entitled to the penalty and not the reversioner (*Mann v. Great Southern and Western Rail. Co.* (1858), 9 Ir. C. L. R. 105). The case of *Collinson v. Newcastle and Darlington Rail. Co.* (1844), 1 Car. & K. 546, a decision to the contrary, is said to have been reversed on motion for a new trial; see *Walford on Railways*.

The "owner thereof" also means the owner of the part of the road interfered with. If the part is owned half by one owner and half by another, then the penalty will go to that owner who first sues and brings his action to trial, and the railway company cannot be compelled to pay more than one penalty of £20 for each day, and apparently the penalty is not apportionable (*Llewellyn v. Vale of Glamorgan Rail. Co.*, [1898] 1 Q. B. 473).

**Sect. 55**

Party suffering damage from interruption of road to recover in an action on the case.

**55.** If any party entitled to a right of way over any road so interfered with by the company shall suffer any special damage by reason that the company shall fail to cause another sufficient road to be made before they interfere with the existing road, it shall be lawful for such party to recover the amount of such special damage from the company, with costs, by action on the case in any of the superior courts, and that whether any party shall have sued for such penalty as aforesaid or not, and without prejudice to the right of any party to sue for the same.

It has been held that the effect of this and the two preceding sections is to take away the right of action at common law for interference with a private road except in the case here provided, namely, where special damage has been committed (*Watkins v. Great Northern Rail. Co.* (1851), 16 Q. B. 961). In such a case, the party entitled to a right of way would have a remedy by compensation (*S. C.*, and see notes to s. 68 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 110, and for temporary occupation, see s. 30 of this Act, *ante*, p. 299).

If special damage has been suffered, this section would, apparently, not prevent the owner also obtaining an injunction if the act of the company is wrongful, or if they have wrongfully neglected to substitute another road (*cf. Fenwick v. East London Rail. Co.* (1875), 20 Eq. 544, p. 549, and see the Scotch case, *Hay v. City of Glasgow Union Rail. Co.* (1874), 1 Sc. Sess. Cas. (4th ser.) 1191).

The expression "right of way" in this section, may probably mean right of passing over the road. See point discussed but not decided by Court of Appeal in *Llerellyn v. Vale of Glamorgan Rail. Co.*, [1898] 1 Q. B. 473, pp. 476, 477.

This section is not applicable when the company are authorised by their Act to close up roads on land purchased, and the remedy is compensation (*Barnard v. Great Western Rail. Co.* (1902), 86 L. T. 798).

Period for restoration of roads interfered with.

**56.** If the road so interfered with can be restored compatibly with the formation and use of the railway, the same shall be restored to as good a condition as the same was in at the time when the same was first interfered with by the company, or as near thereto as may be ; and if such road cannot be restored compatibly with the formation and use of the railway, the company shall cause the new or substituted road, or some other sufficient substituted road, to be put into a permanently substantial condition, equally convenient as the former road, or as near thereto as circumstances will allow ; and the former road shall be restored, or the substituted road put into such condition as aforesaid, as the case may be, within the following periods after the first operation on the former road shall have been commenced, unless the trustees or parties having the management of the road to be restored by writing under their hands consent to an extension of the period, and in such case within such extended period ; (that is to say,) if

the road be a turnpike road, within six months, and if the road be not a turnpike road, within twelve months. Sect. 56.

Under the corresponding section in the Railways Clauses Consolidation (Scotland) Act, it has been held that where it would have been necessary to alter considerably the levels of the road, that such road was not a road that could be restored compatibly with the formation and use of the railway, and that the railway company was entitled to make a substituted road (*Christie v. Caledonian Rail. Co.* (1847), 10 Sc. Sess. Cas. (2nd ser.) 312).

In that case, an opinion was expressed that a proprietor, through whose land a public road passes, and who is interested in the use of it, had a title to object to the railway company's power to divert it, although the road trustees, who were proprietors of the road, did not object, but he cannot object on the ground that his land will be taken to make the new road.

**57.** If any such road be not so restored, or the substituted road so completed as aforesaid, within the periods herein or in the special Act fixed for that purpose, the company shall forfeit to the trustees, commissioners, surveyor, or other person having the management of the road interfered with by the company, if a public road, or if a private road to the owner thereof, five pounds for every day after the expiration of such periods respectively during which such road shall not be so restored or the substituted road completed; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred. Penalty for failing to restore road.

A person who had dedicated a road to the public, but had not fulfilled the conditions which made it repairable by the parish, was held not to be a person having the management of such road under this section, and that he could not recover penalties under it against a railway company who had made a cut across it and rendered it impassable, and had not in due time restored it, as such a dedicator was not bound to repair it (*R. v. Wilson* (1852), 18 Q. B. 348).

**58.** If in the course of making the railway the company shall use or interfere with any road they shall from time to time make good all damage done by them to such road; and if any question shall arise as to the damage done to any such road by the company, or as to the repair thereof by them, such question shall be referred to the determination of two justices; and such justices may direct such repairs to be made in the state of such road, in respect of the damage done by the company, and within such period, as they think reasonable, and may impose on the company, for not carrying into effect such repairs, any penalty not exceeding five pounds per day as to such justices shall seem just; and such penalty shall be paid to the surveyor or other person having the management of Company to repair roads used by them.

**Sect. 58.**

the road interfered with by the company, if a public road, and be applied for the purposes of such road, or if a private road the same shall be paid to the owner thereof: Provided always, that in determining any such question with regard to a turnpike road the said justices shall have regard to and shall make full allowance for any tolls that may have been paid by the company on such road in the course of the using thereof.

The word "use" in this section is to be taken in its ordinary sense meaning, "travel upon," and a company is liable to make good the damage done to a road by carting stone, bricks, timber, and other materials, and whether such carting is done by contractors, sub-contractors or other persons employed by the company (*West Riding and Grimsby Rail. Co. v. Wakefield Local Board* (1864), 33 L. J. M. C. 174). The order by the justices should say what length of road has been injured, and should direct that portion to be repaired. The conviction, if the order is disobeyed, should refer to the order (*London and North Western Rail. Co. v. Wetherall* (1851), 20 L. J. Q. B. 337).

Proceedings  
on applica-  
tion to  
justices to  
consent to  
level cross-  
ings of  
bridleways  
and footways.

**59.** When the company shall intend to apply for the consent of two justices, as hereinbefore provided (a), so as to authorise them to carry the railway across any highway other than a public carriage road on the level, they shall, fourteen days at least previous to the holding of the petty sessions at which such application is intended to be made, cause notice of such intended application to be given in some newspaper circulating in the county, and also to be affixed upon the door of the parish church of the parish in which such crossing is intended to be made, or, if there be no such church, some other place to which notices are usually affixed; and if it appear to any two or more justices acting for the district in which such highway at the proposed crossing thereof is situate, and assembled in petty sessions, after such notice as aforesaid, that the railway can, consistently with a due regard to the public safety and convenience, be carried across such highway on the level, it shall be lawful for such justices to consent that the same may be so carried accordingly.

(a) Section 46, and note thereto, *ante*, p. 307. A railway company, apart from the special Act, are not bound to carry a footpath under or over a railway (*Dartford Rural District Council v. Bexley Heath Rail. Co.*, [1898] A. C. 210).

Appeal  
against the  
determina-  
tion of the  
justices.

**60.** If either party shall feel aggrieved by the determination of such justices upon any such application as aforesaid, it shall be lawful for such party, in like manner and subject to the like conditions as are hereinafter provided in the case of appeals in

respect of penalties and forfeitures, to appeal to the quarter sessions of the county or place in which the cause of appeal shall have arisen ; and it shall be lawful for the justices in such quarter sessions, upon the hearing of such appeal, either to confirm or quash the determination, or to make such other order in regard to the method of carrying the railway across such highway as aforesaid as to them shall seem fit, and to make such order concerning the costs both of the original application and the appeal as to them shall seem reasonable.

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See s. 157, and the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43).

**61.** If the railway shall cross any highway other than a public carriageway on the level, the company shall at their own expense make and at all times maintain convenient ascents and descents, and other convenient approaches, with handrails or other fences, and shall, if such highway be a bridleway, erect and at all times maintain good and sufficient gates, and if the same shall be a footway, good and sufficient gates or stiles, on each side of the railway, where the highway shall communicate therewith.

Company to make sufficient approaches and fences to bridleways and footways crossing on the level.

**62.** If where the railway shall cross any highway on the level the company fail to make convenient ascents and descents or other convenient approaches, and such handrails, fences, gates, and stiles as they are hereinbefore required to make, it shall be lawful for two justices, on the application of the surveyor of roads, or of any two householders within the parish or district where such crossing shall be situate, after not less than ten days' notice to the company, to order the company to make such ascent and descent or other approach, or such handrails, fences, gates, or styles as aforesaid, within a period to be limited for that purpose by such justices ; and if the company fail to comply with such order they shall forfeit five pounds for every day that they fail so to do ; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such person as they think fit, in executing the work in respect whereof such penalty was incurred.

Justices to have power to order approaches and fences to be made to highways crossing on the level.

This section does not empower justices to order the erection of hand-rails and fences at a level crossing on a road which is a carriage road and general highway. The only provision in the Act requiring the company to erect such rails and fences is that contained in s. 61, which is confined to highways other than public carriageways (*R. v. Schofield* (1893), 69 L. T. 313).

**Sect. 63.**

Screens for roads to be made, if required by the Board of Trade.

**63.** If the commissioners or trustees of any turnpike road, or the surveyor of any highway, apprehend danger to the passengers on such road in consequence of horses being frightened by the sight of the engines or carriages travelling upon the railway, it shall be lawful for such commissioners, or trustees, or surveyor, after giving fourteen days' notice to the company, to apply to the Board of Trade with respect thereto ; and if it shall appear to the said board that such danger might be obviated or lessened by the construction of any works in the nature of a screen near to or adjoining the side of such road, it shall be lawful for them, if they shall think fit, to certify the works necessary or proper to be executed by the company for the purpose of obviating or lessening such danger, and by such certificate to require the company to execute such works within a certain time after the service of such certificate, to be appointed by the said board.

Penalty for failing to construct.

**64.** Where by any such certificate as aforesaid the company shall have been required to execute any such work in the nature of a screen, they shall execute and complete the same within the period appointed for that purpose in such certificate ; and if they fail so to do they shall forfeit to the said commissioners, or trustees, or surveyor, five pounds for every day during which such works shall remain uncompleted beyond the period so appointed for their completion ; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

Justices to have power to order repair of bridges, etc.

**65.** Where, under the provisions of this or the special Act, or any Act incorporated therewith, the company are required to maintain or keep in repair any bridge, fence, approach, gate, or other work executed by them, it shall be lawful for two justices, on the application of the surveyor of roads or of any two householders of the parish or district where such work may be situate, complaining that any such work is out of repair, after not less than ten days' notice to the company, to order the company to put such work into complete repair, within a period to be limited for that purpose by such justices ; and if the company fail to comply with such order they shall forfeit five pounds for every day that they fail so to do ; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such persons as they think fit, in putting such work into repair.

Where an Act incorporated this Act, except as expressly varied, and provision was made that trustees under the Turnpike Acts should require the company to repair the roads, this section was thereby excluded; but on the expiration of these Acts, under which the trustees acted, the provisions of the general Act were held to revive (*London, Chatham and Dover Rail. Co. v. Board of Works for Wandsworth* (1873), L. R. 8 C. P. 185).

A special Act, which incorporated so much of this Act as relates "to the mode of crossing roads and construction of bridges," was held to incorporate this section, and s. 145 which provides the mode of enforcing the penalty (*Bristol and Exeter Rail. Co. v. Tucker* (1862), 13 C. B. (N.S.) 207).

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NOTE.

66. [*And whereas the expense might frequently be avoided, and public convenience promoted, by a reference to the Board of Trade upon the construction of public works of an engineering nature connected with the railway, where a strict compliance with the provisions of this or the special Act might be impossible, or attended with inconvenience to the company, and without adequate advantage to the public: Be it enacted, that (a)*] in case any difference in regard to the construction, alteration, or restoration of any road or bridge, or other public work of an engineering nature, required by the provisions of this or the special Act, shall arise between the company and any trustees, commissioners, surveyors, or other persons having the control of or being authorised by law to enforce the construction of such road, bridge, or work, it shall be lawful for either party, after giving fourteen days' notice in writing of their intention so to do to the other party, to apply to the Board of Trade to decide upon the proper manner of constructing, altering, or restoring such road, bridge, or other work; and it shall be lawful for the Board of Trade, if they shall think fit, to decide the same accordingly, and to authorise, by certificate in writing, any arrangement or mode of construction in regard to any such road, bridge, or other work which shall appear to them either to be in substantial compliance with the provisions of this and the special Act, or to be calculated to afford equal or greater accommodation to the public using such road, bridge, or other work; and after any such certificate shall have been given by the Board of Trade the road, bridge, or other work therein mentioned shall be constructed by the company in conformity with the terms of such certificate, and being so constructed shall be deemed to be constructed in conformity with the provisions of this and the special Act: Provided always, that no such certificate shall be granted by the Board of Trade unless they shall be satisfied that existing private rights or interests will not be injuriously affected thereby.

Board of Trade empowered to modify the construction of certain roads, bridges, etc., where a strict compliance with the Act is impossible or inconvenient.

(a) The recital has been repealed by the Statute Law Revision Act, 1891.

**Sect. 67.**

Authentica-  
tion of  
certificates of  
the Board  
of Trade,  
service of  
notices, etc.

**67.** And be it enacted, that all regulations, certificates, notices, and other documents in writing, purporting to be made or issued by or by the authority of the Board of Trade, and signed by some officer appointed for that purpose by the Board of Trade, shall, for the purposes of this and the special Act, and any Act incorporated therewith, be deemed to have been so made and issued, and that without proof of the authority of the person signing the same, or of the signature thereto, which matters shall be presumed until the contrary be proved; and service of any such document, by leaving the same at one of the principal offices of the railway company, or by sending the same by post addressed to the secretary at such office, shall be deemed good service upon the company; and all notices and other documents required by this or the special Act to be given to or laid before the Board of Trade shall be delivered at, or sent by post addressed to, the office of the Board of Trade in London.

And with respect to works for the accommodation of lands adjoining the railway, be it enacted as follows:

This heading covers ss. 68—75.

**68.** The company shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway; (that is to say,)

Gates,  
bridges, etc.:

Such and so many convenient gates, bridges, arches, culverts, and passages over, under, or by the sides of or leading to or from the railway, as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made; and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed, or during the formation thereof:

Fences:

Also sufficient posts, rails, hedges, ditches, mounds, or other fences, for separating the land taken for the use of the railway from the adjoining lands not taken, and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout, by reason of the railway, together with all necessary gates, made to open towards such adjoining lands, and not towards the railway, and all necessary stiles; and such posts, rails, and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be:

Also all necessary arches, tunnels, culverts, drains, or other passages, either over or under or by the sides of the railway, of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be; and such works shall be made from time to time as the railway works proceed : Sect. 68.  
Drains :

Also proper watering places for cattle where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering places; and such watering places shall be so made as to be at all times as sufficiently supplied with water as theretofore, and as if the railway had not been made, or as nearly so as may be; and the company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering places :

Provided always, that the company shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the railway, nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

**"Shall make . . . the following works."**—The powers of the company to take lands compulsorily, extend to taking lands for these works as well as for the actual construction of the railway, provided the company has been authorised to take the lands if required. See note to s. 16, *supra*, p. 290, and cases there cited; and see also s. 18 of the Lands Clauses Consolidation Act, 1845, note, as to land authorised to be taken, *ante*, p. 33.

A railway company are bound by this section to make and maintain the works mentioned, but if they, in fact, make them, their sufficiency cannot be questioned after five years by reason of s. 73, *post* (*Dixon v. Great Western Rail. Co.*, [1897] 1 Q. B. 300).

If a railway company delay in making the accommodation works, it has been held in Scotland that if the owner or occupier thereby suffers damage, he is entitled to recover damages from the railway company by reason of the breach of the statutory duty placed upon them (*Pollock v. North British Rail. Co.* (1901), 3 Ct. of Sess. Cas. (5th ser.) 727).

This section has reference to what takes place upon the surface of the land and not below the surface, as in the case of mines, and a company would not be required to make accommodation works for mine-owners (*R. v. Fisher* (1862), 3 B. & S. 191). The question whether works made by a company are accommodation works so as to entitle an adjoining owner to have them maintained, is one to be determined at the time of the construction of the works, and the owner should at that time elect as to the step he will take for obtaining redress under the statute (*S. C.*, pp. 199, 200).

Where the compensation for the severance of land is being ascertained by arbitrators or jury, they will be entitled and ought to take into account the fact that accommodation works may be ordered; but that is only in regard

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to the present and not the prospective use of the land. See *Lands Clauses Consolidation Act, 1845*, s. 63, *ante*, p. 96; *R. v. Brown* (1867), L. R. 2 Q. B. 630).

Where a railway company provided a level crossing to join the severed portions of an owner's land, and the owner afterwards granted the land on one side to one person, and later the land on the other side to another person, and the former released to the company his right to use the crossing, and the company on their own land erected fences which obstructed the crossing, it was held that they were entitled so to do as the owner who had not released his right had no land to which he was entitled to have communication, and an injunction was granted to restrain him from injuring the fences. The expression "shall at all times" maintain, does not mean that the company must maintain it at all times if the owner does not want it. His acts, in this case, were held to amount to an abandonment of his rights (*Midland Rail. Co. v. Gribble*, [1895] 2 Ch. 827).

**"Passages."**—Where under a special Act a company was required to make such communications as would be necessary for the convenient use of certain pasture land, and the land was afterwards turned into building land, the owners of houses built on the land were held entitled to use the level crossings made when the land was pasture land (*United Land Co. v. Great Eastern Rail. Co.* (1875), L. R. 10 Ch. 586; *cf. Finch v. Great Western Rail. Co.* (1879), 5 Ex. D. 254).

But under this Act an owner who afterwards opened a quarry on agricultural land and sought to draw stones by traction engines and waggons over the crossing was restrained by injunction from so doing on the ground that this was placing a greater burden on the railway company than was originally contemplated, and also because such use would endanger the traffic on the railway (*Great Northern Rail. Co. v. McAllister*, [1897] 1 I. R. 587); and see to the like effect *Great Western Rail. Co. v. Talbot*, [1902] 2 Ch. 759, a case where the company had agreed to make and maintain certain works for the accommodation of the owners and occupiers for the time being, such works including a level crossing for a tramway. It was held in that case that the owner could not take over the tramway goods and traffic from other land than his own, and that he was not entitled to use the crossing so as to substantially increase the burden of the easement.

The word "necessary" here applies only to making good interruptions. If they can be made good in more than one way, the company, acting under the advice of their engineer, may choose which way the works are to be done, provided each way be convenient. If they are not convenient, the landlord can apply to the magistrates under s. 69. The company has, therefore, power to take lands compulsorily for making good an interruption in a convenient way, and the landowner whose land is taken cannot object that it might be done in another way (*Wilkinson v. Hull and Barnsley Railway and Dock Co.* (1882), 20 Ch. D. 323; *Dowling v. Pontypool, etc. Rail. Co.* (1874), L. R. 18 Eq. 714).

**"Fences."**—The Railway Regulation Act, 1842 (5 & 6 Vict. c. 55), s. 10, enacts as follows:

"All railway companies shall be under the same liability of obligation to erect, and to maintain and repair, good and sufficient fences throughout the whole of their respective lines, as they would have been if every part of such fences had been originally ordered to be made under an order of justices by virtue of the provisions to that effect in the Acts of Parliament relating to such railways respectively."

This section has not been repealed, and is printed in the revised statutes, although JERVIS, C.J., in *Manchester, Sheffield and Lincolnshire Rail. Co. v. Wallis* (1854), 23 L. J. C. P. 85, p. 89, expressed an opinion that it was

repealed and consolidated in the Railways Clauses Act, 1845, ss. 68 and 69. As to when an Act is impliedly repealed, see *Wyatt v. Gens*, [1893] 2 Q. B. 225; *Summers v. Holborn Board of Works*, [1893] 1 Q. B. 612; *City and South London Rail. Co. v. London County Council*, [1891] 2 Q. B. 513.

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NOTE.

The obligation to make and maintain fences applies only as against the cattle of the owners and occupiers of adjoining lands and their licensees, and does not apply to sheep trespassing or cattle straying on the highway. The liability is the same as that at common law of an owner who is bound to make and maintain a fence by prescription (*Ricketts v. East and West India Docks and Birmingham Rail. Co.* (1852), 21 L. J. C. P. 201; *Manchester, Sheffield and Lincolnshire Rail. Co. v. Wallis* (1854), 23 L. J. C. P. 85; *Davson v. Midland Rail. Co.* (1872), L. R. 8 Ex. 9; *Dizon v. Great Western Rail. Co.*, [1897] 1 Q. B. 300).

A highway is adjoining land within this section, but the section applies only in the case of animals driven along it, and not to those straying on it (*Midland Rail. Co. v. Daykin* (1855), 17 C. B. 126; *Manchester, Sheffield and Lincolnshire Rail. Co. v. Wallis* (1854), 23 L. J. C. P. 85; *Luscombe v. Great Western Rail. Co.*, [1899] 2 Q. B. 313).

*Sufficiency of fence.*—"Cattle" in this section includes "pigs," and the fence must be sufficient to prevent pigs getting on the line (*Child v. Hearn* (1874), L. R. 9 Ex. 176). It must also be sufficient to prevent horses and other cattle putting their heads through and doing damage (*Wiseman v. Booker* (1878), 3 C. P. D. 184). If sheep escape through a hole in a hedge, which is the fence provided, the company will be liable (*Bessant v. Great Western Rail. Co.* (1860), 8 C. B. (N.S.) 368). And a railway company have been held liable where a bull jumped over an iron fence six feet high (*S. C.*, p. 372). The fact that a spring catch on a gate is out of order is evidence of negligence on the part of the company in not maintaining a sufficient fence and gate, although there may be other fastenings to the gate (*Brooks v. London and North Western Rail. Co.* (1884), 33 W. R. 167).

*Drains.*—A company under this section is not bound to make and maintain drains to carry away water so as to prevent it percolating into mines below the railway (*R. v. Fisher* (1862), 3 B. & S. 191). The remedy in such a case is not by proceeding under s. 69, but by action (*S. C.*, and *Bagnall v. London and North Western Rail. Co.* (1861), 7 H. & N. 423).

*Proviso.*—The fact that the landowner may receive compensation instead of requiring accommodation works to be done will not exonerate the railway company from making and maintaining accommodation works for a tenant who may be in occupation at the time the railway is made (*Corry v. Great Western Rail. Co.* (1881), 7 Q. B. D. 322).

As to the effect of receiving compensation so as to disentitle him from crossing the line until the accommodation works are made, see s. 74, *post*.

Where a railway company by contract agreed to make certain accommodation works, and to render certain personal service as part of the compensation, for land taken; but after the railway had been closed for some years the undertaking was sold to another company, subject to the contracts and liabilities of the old company, the court granted specific performance of the contracts to make the accommodation works and to do the service against the purchasing company (*Fortescue v. Lostwithiel and Fowey Rail. Co.*, [1894] 3 Ch. 621, following *Earl of Jersey v. Great Western Rail. Co.*, *ibid.*, note, p. 625). For form of order against a railway company to observe contracts, see *S. C.* and *Greene v. West Cheshire Rail. Co.* (1871), L. R. 13 Eq. 44).

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Differences as to accommodation works to be settled by justices.

**69.** If any difference arise respecting the kind or number of any such accommodation works, or the dimensions or sufficiency thereof, or respecting the maintaining thereof, the same shall be determined by two justices; and such justices shall also appoint the time within which such work shall be commenced and executed by the company.

The justices have power to determine what works are sufficient on account of the interruption to the use of the land, that is to the present and not to the prospective use of it; the use at the time of the interruption. Thus, if it is agricultural land, they could not take into account that it might soon be used for building purposes (*R. v. Broen* (1867), L. R. 2 Q. B. 630; and see *R. v. Fisher* (1862), 3 B. & S. 191, approved by the Court of Appeal in *Rhondda and Swansea Rail. Co. v. Talbot*, [1897] 2 Ch. 131). Their jurisdiction is, however, limited only to deciding the kind, number, and sufficiency. They have no power to decide whether there shall or shall not be accommodation works. That question is determinable by the High Court, and the question can be raised on an application for a *mandamus* requiring the company to make accommodation works (*R. v. Waterford and Limerick Rail. Co.* (1852), 2 Ir. C. L. 580).

The High Court will not exercise a concurrent jurisdiction with the justices as to the sufficiency of accommodation works either during the construction of the railway or after its completion (*Hood v. North Eastern Rail. Co.* (1870), L. R. 11 Eq. 116).

An arbitrator or jury in assessing compensation for land severed have no power to order accommodation works, or to award anything in respect of the same (*R. v. South Wales Rail. Co.* (1849), 13 Q. B. 988).

Execution of works by owners on default by the company.

**70.** If for fourteen days next after the time appointed by such justices for the commencement of any such works the company shall fail to commence such works, or having commenced shall fail to proceed diligently to execute the same in a sufficient manner, it shall be lawful for the party aggrieved by such failure himself to execute such works or repairs; and the reasonable expenses thereof shall be repaid by the company to the party by whom the same shall so have been executed; and if there be any dispute about such expenses the same shall be settled by two justices: Provided always, that no such owner or occupier or other person shall obstruct or injure the railway, or any of the works connected therewith, for a longer time, nor use them in any other manner, than is unavoidably necessary for the execution or repair of such accommodation works.

Power to owners of land to make additional accommodation works.

**71.** If any of the owners or occupiers of lands affected by such railway shall consider the accommodation works made by the company, or directed by such justices to be made by the company, insufficient for the commodious use of their respective lands, it shall be lawful for any such owner or occupier, at any time, at his

own expense, to make such further works for that purpose as he shall think necessary, and as shall be agreed to by the company, or, in case of difference, as shall be authorised by two justices.

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This section is not applicable to a case where the landowner has received compensation in lieu of accommodation works. If he does so he cannot afterwards construct such works. Thus, where an owner agreed to accept a certain sum, which should include full satisfaction for all accommodation works, with the exception of certain level crossings, it was held that he could not under this section build a bridge over the railway (*Rhondda and Swansea Rail. Co. v. Talbot*, [1897] 2 Ch. 131).

**72.** If the company so desire, all such last-mentioned accommodation works shall be constructed under the superintendence of their engineer, and according to plans and specifications to be submitted to and approved by such engineer; nevertheless the company shall not be entitled to require either that plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by the company, or that the plans selected should be executed in a more expensive manner than that adopted in similar cases by the company.

Such works to be constructed under the superintendence of the company's engineer]]

**73.** The company shall not be compelled to make any further or additional accommodation works for the use of owners and occupiers of land adjoining the railway after the expiration of the prescribed period, or, if no period be prescribed, after five years from the completion of the works, and the opening of the railway for public use.

Accommodation works not to be required after five years.

If an accommodation work is made and considered sufficient at the time a railway is made, and is properly maintained as made, the landowner has no remedy if after five years he suffers damage by alleged insufficiency in the work constructed (*Colley v. London and North Western Rail. Co.* (1880), 5 Ex. D. 277; *Ryan v. Great Southern and Western Rail. Co.* (1892), 32 L. R. Ir. 15).

This section is not applicable if no accommodation works have in fact been made (*Dixon v. Great Western Rail. Co.*, [1897] 1 Q. B. 300). In that case, in the Court below, at [1896] 2 Q. B., p. 347, Lord RUSSELL, C.J., said: "It seems to me that the reasonable construction to be put on those words is this: that if at the time of opening the railway or within the five years the company have in fact supplied accommodation works, and those works have been accepted by the person who had a right to call for them, and if that person has not chosen within the five years to complain of their insufficiency, he cannot after the expiration of that period be heard to complain that they are insufficient and require further works to be made. But where, as here, the company have made no accommodation works at all within the five years, there is nothing which the adjoining owner can within that period accept as in satisfaction of the company's obligation, and s. 73 cannot apply." This view was confirmed by the Court of Appeal.

Where the conveyance reciting a decree arbitral on a statutory reference provided that the railway company should be bound to preserve the effective

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drainage of the land interfered with, it was held under the Scotch Act that this provision was not unlimited as to time, but was to be read with the corresponding provision to s. 73 in the Scotch Act (*Great North of Scotland Rail. Co. v. Duke of Fife* (1900), 82 L. T. 425).

Owners to be allowed to cross until accommodation works are made.

**74.** Until the company shall have made the bridges or other proper communications which they shall under the provisions herein or in the special Act, or any Act incorporated therewith, contained, have been required to make between lands intersected by the railway, and no longer, the owners and occupiers of such lands, and any other persons whose right of way shall be affected by the want of such communication, and their respective servants, may at all times freely pass and repass, with carriages, horses, and other animals, directly (but not otherwise) across the part of the railway made in or through their respective lands, solely for the purpose of occupying the same lands, or for the exercise of such right of way, and so as not to obstruct the passage along the railway, or to damage the same; nevertheless, if the owner or occupier of any such lands have in his arrangements with the company received or agreed to receive compensation for or on account of any such communications, instead of the same being formed, such owner or occupier, or those claiming under him, shall not be entitled so to cross the railway.

Where an owner of land severed by a railway claimed compensation from the company, and the jury awarded compensation on the footing that there was to be a total separation of his land without any communication being made, which compensation he received, this was held to be an arrangement within a section of the special Act corresponding to the above section; and it was further held that he was a trespasser if he afterwards crossed the line (*Manning v. Eastern Counties Rail. Co.* (1843), 3 Rail. Cas. 637).

Penalty on persons omitting to fasten gates.

**75.** If any person omit to shut and fasten any gate set up at either side of the railway for the accommodation of the owners or occupiers of the adjoining lands as soon as he and the carriage, cattle, or other animals under his care have passed through the same, he shall forfeit for every such offence any sum not exceeding forty shillings.

Power to parties to make private branch railways communicating with the railway. 5 & 6 Vict. c. 55.

**76.** And be it enacted, that this or the special Act shall not prevent the owners or occupiers of lands adjoining to the railway, or any other persons, from laying down, either upon their own lands or upon the lands of other persons with the consent of such persons, any collateral branches of railway to communicate with the railway, for the purpose of bringing carriages to or from or upon the railway, but under and subject to the provisions and

restrictions of an Act passed in the sixth year of the reign of her present Majesty, intituled an Act for the better regulation of railways, and for the conveyance of troops (a) ; and the company shall, if required, at the expense of such owners and occupiers and other persons, and subject also to the provisions of the said last-mentioned Act, make openings in the rails, and such additional lines of rail as may be necessary for effecting such communication, in places where the communication can be made with safety to the public, and without injury to the railway, and without inconvenience to the traffic thereon ; and the company shall not take any rate or toll or other moneys for the passing of any passengers, goods, or other things along any branch so to be made by any such owner or occupier or other person ; but this enactment shall be subject to the following restrictions and conditions ; (that is to say,)

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No such branch railway shall run parallel to the railway :

Restrictions  
and con-  
ditions

The company shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere, nor upon any inclined plane or bridge, nor in any tunnel :

The persons making or using such branch railways shall be subject to all byelaws and regulations of the company from time to time made with respect to passing upon or crossing the railway and otherwise ; and the persons making or using such branch railways shall be bound to construct, and from time to time, as need may require, to renew, the offset plates and switches, according to the most approved plan adopted by the company, and under the direction of their engineer.

(a) The Railway Regulation Act, 1842. See the Short Titles Act, 1896 (59 & 60 Vict. c. 14).

Where a railway company has given permission to make an opening for a private siding, such permission is not a license, and after the private line has been made, it cannot be revoked (*Bell v. Midland Rail. Co.* (1859), 3 De G. & J. 673).

This section is applicable only to communications required by the owners of branch railways for the purpose of using the railway with their own engines and carriages, and does not entitle an adjoining owner who makes a siding to demand a communication with the railway for the purpose of establishing a claim to facilities for traffic (*Lancashire Brick and Terra Cotta Co., Limited v. Lancashire and Yorkshire Rail. Co.*, [1902] 1 K. B. 651). The limitation as to the place of communication does not relate solely to the structural difficulties of making an opening, but has reference also to difficulties arising from working the traffic (*ibid.*), and see also *Richard v. Great Western Rail. Co.* (1900), 11 Rail. Cas. 133.

As to renewing offset plates and switches, see *Woodruff v. Brecon, etc. Rail. Co.* (1884), 28 Ch. D. 190.

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And with respect to mines lying under or near the railway, be it enacted as follows :

**"With respect to mines."**—Under this heading are included ss. 77—85. With these sections may be compared ss. 18—27 of the Waterworks Clauses Act, 1847, *post*, which contain slightly different provisions in regard to mines.

In cases under these respective Acts, these clauses are to be regarded as a statutory code as to the relative rights of mine-owners and companies where lands are compulsorily taken. They are intended to deal with every case, and to get rid of all the ordinary law as to the subject (*Great Western Rail. Co. v. Bennett* (1867), L. R. 2 H. L. 27; *In re Lord Gerard and London and North Western Rail. Co.*, [1895] 1 Q. B. 459, as to railways; and *Holliday v. Mayor of Wakefield*, [1891] A. C. 81, as to waterworks).

Company  
not to be  
entitled to  
minerals

**77.** The company shall not be entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless the same shall have been expressly purchased : and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

**"Mines of coal, ironstone, slate, or other minerals."**—The interpretation of these words in this section and in corresponding sections of other consolidating Acts has given rise to some conflict of judicial opinion.

According to the general law in England, a reservation of "minerals" includes every substance which can be got from underneath the surface of the earth for the purpose of profit, unless there is something in the context or in the nature of the transaction to give it a more limited meaning (*Hext v. Gill* (1872), L. R. 7 Ch. 699, p. 712). It would thus include all substances (other than the agricultural surface of the ground) which may be got for manufacturing or mercantile purposes (*Midland Rail. Co. v. Checkley* (1867), L. R. 4 Eq. 19). Some exception has been taken to the element of profit as not a necessary part of the definition. See *per Lord HALSBURY in Lord Provost of Glasgow v. Farie* (1888), 13 App. Cas. 657, p. 670, and his remarks in *In re Todd, Birlestone & Co. and North Eastern Rail. Co.*, [1903] 1 K. B. 603, at pp. 606, 607; and see *per Lord HERSCHELL in Midland Rail. Co. v. Robinson* (1889), 15 App. Cas. 19 p. 27. But the rule laid down in *Hext v. Gill* has been followed with approval as regards ordinary reservations in ordinary grants by the Court of Appeal in *Earl of Jersey v. Neath Guardians* (1889), 22 Q. B. D. 555. According to the general law, therefore, minerals include clay and brick earth (*Earl of Jersey v. Neath Guardians, supra*; *Hext v. Gill, supra*), freestone and other stone usually got by quarrying (*Bell v. Wilson* (1866), L. R. 1 Ch. 303; *Midland Rail. Co. v. Checkley* (1867), L. R. 4 Eq. 19; *Greville v. Hemingway* (1902), 87 L. T. 443; and see *Scott v. Midland Rail. Co.*, [1901] 1 K. B. 317), coprolites (*Attorney-General v. Tomline* (1877), 5 Ch. D. 750), and red-rock and coal not workable at a profit (*Johnstone v. Crompton & Co.*, [1899] 2 Ch. 190).

Such being the general law as to what are minerals, its application to this section is rendered more difficult by reason of the fact that the words are not "mines and minerals," but "mines of minerals." It is now clear, from a series of authorities, that the method of getting the mineral does not afford a criterion as to whether any particular layer of minerals constitute a mine. The word "mine" in this section is used in the widest sense that can be properly given to it, and it must be taken to signify all excavations by which the excepted minerals can be legitimately worked and got, whether

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by surface or underground working (*Midland Rail. Co. v. Robinson* (1889), 15 App. Cas. 19, per Lords WATSON and HERSCHELL, pp. 28 and 34). In that case, Lord MACNAGHTEN considered that "mines" referred only to underground workings, adhering to an opinion to the same effect expressed in *Lord Provost of Glasgow v. Farie* (1888), 13 App. Cas. 657; but although supported in that opinion by *obiter dicta*, the general course of the decisions has been in the opposite direction.

Thus it has been held in several cases that if the usual mode of a district to obtain the mineral is by digging, then such digging will be mining within this section; on this principle it has been decided that among the minerals to which a railway company shall not be entitled without purchase are included: clay (*Midland Rail. Co. v. Haunchwood Brick and Tile Co.* (1882), 20 Ch. D. 552; *Tiverton v. Loosemore* (1882), 22 Ch. D. 25, per FRY, J.; *Midland Rail. Co. v. Miles* (1886), 33 Ch. D. 632; *Ruabon Brick, etc. Co. v. Great Western Rail. Co.*, [1893] 1 Ch. 427); and also limestone worked from the surface (*Midland Rail. Co. v. Robinson* (1889), 15 App. Cas. 19; *Dixon v. Caledonian Rail. Co.* (1880), 5 App. Cas. 820).

A freestone quarry has also been held in a Scotch case to be a mine within this section (*Jamieson v. North British Rail. Co.* (1868), 6 Sc. L. R. 188), but apart from the statute, "mines and minerals," in Scotch law, would not include a freestone quarry (*Menzies v. Earl of Breadalbane* (1822), 1 Sh. App. 225).

But not every scattered piece of mineral lying under land can be called a mine, but only mineral substances lying in seams, beds or strata (*Lord Provost of Glasgow v. Farie* (1888), 13 App. Cas. 657, p. 685; explained in *Midland Rail. Co. v. Robinson* (1889), 15 App. Cas. 19, p. 27). In *Farie's Case*, a bed of valuable clay, forming part of the surface or subsoil, was held to have passed to the company and not to be reserved to the landowner. Lord HERSCHELL dissented from the finding, and the judgments of the other three lords present were based on different grounds. Lord HALSBURY based his opinion on the ground that in Scotch law the word mine only included underground workings, and Lord MACNAGHTEN held generally that such was the proper meaning of "mine." Lord WATSON held, that the question whether it was a mine or not was independent of the manner of working, but that what a company acquires on purchasing the surface was the upper soil and subsoil, whether clay, sand, or gravel, and that clay forming part of the soil or subsoil passed to the company. To this view he adhered in *Midland Rail. Co. v. Robinson* (1889), 15 App. Cas. 19, p. 34, adding that it would be more accurate to say that the expression "mines of coal, etc.," is used by the legislature to denote the minerals *in situ*, without reference to the manner in which they can be worked.

In *Ruabon Brick Co. v. Great Western Rail. Co.*, [1893] 1 Ch. 427, the clay came up nearly to the surface of the land, being only covered by a layer of surface soil from three to eight feet thick, but it was expressly reserved in the conveyance, and the point that it formed part of the soil does not appear to have been taken.

In *Great Western Rail. Co. v. Blades*, [1901] 2 Ch. 624, BUCKLEY, J., discussed all the above cases, and pointed out that the distinction between cases like *Hext v. Gill*, *supra*, and those under this Act lay in the fact that in an ordinary reservation of minerals in a contract for the sale of land the vendor grants a right of support, whereas under this Act a railway company acquire no such rights. The same considerations do not, therefore, apply to the two cases. The effect of the authorities he held to be that "mineral" may include clay, but not that it must include clay, and that the question whether it does or does not is to be determined by ascertaining the true nature of the transaction and the object of the contracting parties. In some districts it might be a mineral, and in others not. In the case before him the clay was in fact the land, and, therefore, he held that it was not a mineral within the meaning of this section. The clay in question

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was Staffordshire blue brick clay, and was of a valuable kind, but on the facts it was held that the clay was the soil.

**NOTE.**

In the case of *In re Todd, Birleston & Co. and North Eastern Rail. Co.*, [1903] 1 K. B. 603, it was held by the Court of Appeal, following *Farie's Case*, *supra*, that an extensive bed of clay under the surface or vegetable soil was not a mine of mineral within the meaning of this section, and the case of *Great Western Rail. Co. v. Blades*, *supra*, was approved.

**"Unless . . . expressly purchased."**—Railway companies may purchase the mines compulsorily at the time they purchase the surface, as this section does not affect their power to purchase. They may also purchase them compulsorily after they have purchased the surface, if their time for compulsory purchase of land has not expired, and if they are necessary for the support of the surface (*Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559). As to the question of support, see note to s. 79, *infra*.

A railway company entering under section 85 of the Lands Clauses Consolidation Act, 1845, is not bound to give a bond for the minerals, although the company may afterwards agree to purchase them, and payment of the price of the surface only will be a fulfilment of the bond (*Ex parte Neath Rail. Co.* (1876), 2 Ch. D. 201).

A railway company may also purchase certain of the minerals, such as clay and gravel, and exclude others such as coal (*In re Lord Gerard and London and North Western Rail. Co.*, [1895] 1 Q. B. 459), and as it is doubtful as to what minerals do pass, railway companies will no doubt protect themselves from having to purchase such minerals a second time by including clay and gravel in their notice to treat. If they are not included in the notice they cannot be included in the conveyance as minerals, although all the minerals known to be in the land are gravel and clay, and the land has been valued at a high price as building land (*Re Metropolitan District Rail. Co. v. Cotton's Trustees* (1881), 45 L. T. 103).

Where a company gives notice to treat for the land and minerals, there is no rule which imposes on a landowner the burden of proving by costly experiments the mineral contents of his land, and if there is sufficient evidence to justify a jury in coming to the conclusion that valuable minerals exist the verdict will not be disturbed, because the landowner has not proved that the minerals in fact do exist (*Brown v. Commissioner for Railways* (1890), 15 App. Cas. 240, an appeal from New South Wales to the Privy Council).

If companies in constructing the railway dig up any of the clay, they will have to pay compensation for it; but the fact that they do so dig up part thereof is not to be taken as evidence of their intention to take the minerals (*In re Corporation of Huddersfield and Jacomb* (1874), L. R. 10 Ch. 92). If a railway company in the construction of their works removes minerals, which it is not necessary to remove for the construction of the works, the landowner may bring an action for trespass, and is not limited to the remedy by compensation under s. 6, *ante*, p. 282 (*Loosemore v. Tiverton and North Devon Rail. Co.* (1882), 22 Ch. D. 25; *per FRY, J.*, on appeal on another point, (1884), 9 App. Cas. 480).

If a railway company, in constructing a railway, remove minerals not the property of the owner from whom they acquired the land, it was stated by Lord HALSBURY that it was the duty of the owner to initiate proceedings to recover the compensation, but the other lords did not think it necessary to decide the point (*Caledonian Rail. Co. v. Davidson*, [1902] A. C. 22, p. 29).

Mines lying near the railway not to be worked if the company willing to purchase them.

**78.** If the owner, lessee, or occupier of any mines or minerals lying under the railway, or any of the works connected therewith, or within the prescribed distance, or, where no distance shall be prescribed, forty yards therefrom, be desirous of working the

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same, such owner, lessee, or occupier shall give to the company notice in writing of his intention so to do, thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the company to cause such mines to be inspected by any person appointed by them for the purpose; and if it appear to the company that the working of such mines or minerals is likely to damage the works of the railway, and if the company be willing to make compensation for such mines or any part thereof to such owner, lessee, or occupier thereof, then he shall not work or get the same; and if the company, and such owner, lessee, or occupier, do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation.

**"Owner, lessee, or occupier."**—The person entitled to give notice of his intention to work the mine is the owner, lessee, or occupier, who at the time of giving the notice is entitled to work the mines (*Smith v. Great Western Rail. Co.* (1877), 3 App. Cas. 165). If the owner is entitled to work them he may give the notice although he may have no intention of working them himself, but only by his lessees and licensees (*Midland Rail. Co. v. Robinson* (1889), 15 App. Cas. 19). As to the apportionment of the compensation between a tenant for life and the remaindermen, see *Cardigan v. Curzon Howe* (1898), 14 T. L. R. 550.

**"Be desirous of working."**—There must be a real desire to work, and not merely a desire to compel the company to purchase the minerals. The expression of the desire is not enough, but it must be an honest, actual existence of the desire either by the owner or his lessees. If an owner gives a notice of his desire to work when it is obvious that there are no minerals, or that he cannot possibly intend either to let or work them himself, the court will now allow it to be acted upon (*Midland Rail. Co. v. Robinson* (1889), 15 App. Cas. 19, p. 32, and see *Dixon v. Caledonian Rail. Co.* (1880), 5 App. Cas. 820, p. 839).

**"Is likely to damage the works."**—It is for the company to say whether or not the working of the mines is likely to damage the works. If the company, acting *bonâ fide* on the advice of the engineer or other proper adviser, considers the mines necessary for the support of the undertaking, the court will not interfere to prevent the mines being purchased. The mine-owner if he dispute the matter must shew *mala fides*, and the burden of proof will lie upon him (*Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559, and see s. 18 of the Lands Clauses Consolidation Act, 1845, note, as to lands required for the purposes of the undertaking, *ante*, p. 30).

**"To make compensation."**—In construing this section it must be read along with s. 6, *supra*, p. 282, which provides that full compensation shall be made for lands taken or injuriously affected; and also that such compensation shall be ascertained and determined according to the Lands Clauses Consolidation Act. "Land" in s. 6 includes mines. It follows, therefore, that when a lessee or occupier gives the notice and receives the compensation, he not only may not work the mines, but that other persons having an interest are to be compensated according to s. 6 in respect of their interest, and being compensated they will not be entitled to work (*Smith v. Great Western Rail. Co.* (1877), 3 App. Cas. 165). The service of a notice under this section is binding on the company, and they cannot withdraw from it (*Edinburgh and District Water Trustees v. Clippens Oil Co.* (1902), 87 L. T. 275; *W. N.* 157). Inasmuch as the compensation is to be ascertained under the Lands

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Clauses Act, and not under the arbitration clauses of this Act, the provisions of the Lands Clauses Consolidation Act as to costs, and as to the company taking up the award, will apply (*R. v. London and North Western Rail. Co.*, [1894] 2 Q. B. 513). Claims arising wholly under s. 81 are to be settled by arbitration only, and not under the Lands Clauses Acts, but if claims are made under s. 78 wide enough to include claims under s. 81 but not claimed as independent matters arising under s. 81, the determination will be under the Lands Clauses Acts. Thus, where mine-owners gave notice of their intention to work and the railway company required certain pillars of coal to be left, and offered to treat for the purchase thereof, and the matters referred to arbitration included the price thereof, and compensation in respect of interruption of working and in respect of restrictions upon the working so as not to affect the railway, the arbitration was held to be under s. 78, and, therefore, under the Lands Clauses Act (S. C.).

The right given in a lease to sink a shaft in the land taken in order to work minerals under other parts of the land, if interfered with gives the lessee the right to recover compensation (*In re Masters and Great Western Rail. Co.*, [1901] 2 K. B. 84).

When a railway company serves a notice to treat for the surface and certain of the minerals underneath, but the notice excludes others such as coal, the landowner, in having the compensation ascertained, is not entitled to claim compensation in respect of the coal, on the ground that when he comes to work it he may not be able to do so without removing some of the other minerals. In such a case he would be entitled to work through and remove the other minerals, and he can have no claim for compensation in respect of the coal until he is desirous of working it, and gives notice of his desire under this section (*In re Lord Gerard and London and North Western Rail. Co.*, [1895] 1 Q. B. 459; cf. *Holiday v. Mayor of Wakefield*, [1891] A. C. 81, a case under the Waterworks Clauses Act, 1847, and see the notes to ss. 6, 18—27 of that Act, *post*).

In determining the amount of compensation payable for coal required to be left unworked, the arbitrator may take into account an unexpected rise in the value of coal which has taken place after the company have given their notice not to work and before the award. The true inquiry under this section is not of the value of the coalfield or what the value of the coal is, but what would the colliery company, if they had not been prohibited, have made out of the coal during the time it would have taken them to have got it (*In re Brillfa and Merthyr Dare Steam Collieries* (1891), *Limited*, and *Pontypridd Waterworks Co.*, H. of L., Aug. 6th, 1903, reversing [1902] 2 K. B. 135).

As to the compensation payable in respect of minerals under land which was purchased under a repealed act, see *R. v. London and North Western Rail. Co.*, [1899] 1 Q. B. 921; and on appeal, *London and North Western Rail. Co. v. Walker*, [1900] A. C. 109. And see the final result of the litigation in *London and North Western Rail. Co. v. Walker*, [1903] W. N. 104, where it was held that the effect of the special Act was to exclude the operation of this Act in respect of all acts done under the repealed Act.

No property passes when compensation is paid under this section (*Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559, pp. 570, 575), nor does an acknowledgment of the receipt of the amount awarded in satisfaction of all claims, and an undertaking to leave the coal unworked, amount to a "conveyance on sale" under the Stamp Act, 1861, ss. 54 or 60, and is not therefore chargeable with an *ad valorem* stamp duty (*Great Northern Rail. Co. v. Commissioners of Inland Revenue*, [1901] 1 K. B. 416).

In a case under a canal Act, where the canal owners were bound to purchase the minerals, it was held that they must pay interest on the purchase money from the date of the notice by the company of their intention to purchase (*Fletcher v. Lancashire and Yorkshire Rail. Co.*, [1902] 1 Ch. 901).

If mines are injuriously affected by reason of the execution of the

railway, the mine-owner will no doubt be entitled to compensation in respect of such injurious affection ; but if, in consequence of the works being improperly constructed and improperly maintained, damage is done to mines, the remedy is by action and not under this Act for compensation. Thus if drains are improperly made and maintained so that when afterwards mines are worked under the railway, these mines are flooded the mine-owner has a remedy against the railway company for damages (*Bagnall v. London and North Western Rail. Co.* (1861), 31 L. J. Ex. 121, 480). In a case under a canal Act, containing similar provisions as to mines, the canal company refused to purchase the mines ; the mine owner continued to work with the result that water escaped from the canal and flooded the mine, he brought an action against the company for the damages suffered, but as he did not show that the canal was improperly made or conducted, it was held that no action lay (*Dunn v. Birmingham Canal Co.* (1872), L. R. 8 Q. B. 42). In that case, however, KELLY, C.B., and PIGGOTT, B., expressed the opinion that under the provisions of that Act, the plaintiff would have been entitled to compensation. In cases of waterworks and similar undertakings, where injury may be done to mines by flooding if the mines are worked, special remedies are given to the mine-owner. See Waterworks Clauses Act, 1847, ss. 25, 27, and notes thereto ; and see *Holliday v. Mayor of Wakefield*, [1891] A. C. 81, as to the effect of these sections.

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NOTE

**Counter-notice by company.**—On receipt of the notice from the owner, lessee, or occupier of his intention to work the mines, the company, if it is willing to make compensation, should send a counter-notice to the person sending the notice, stating that intention (*Smith v. Great Western Rail. Co.* (1877), 3 App. Cas. 165). That counter-notice, however, is not required to be given within thirty days. It may be given at any time before all the minerals are worked out, and the company may thereby stop the mining operations at any stage, in which case the company will be required to pay full compensation for all damage occasioned by such stoppage (*Dixon v. Caledonian, and Great and South Western Rail. Co.* (1880), 5 App. Cas. 820, not following a dictum of CAIRNS, L.C., in *Smith v. Great Western Rail. Co.*, *supra*).

**79.** If before the expiration of such thirty days the company do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines or any part thereof for which the company shall not have agreed to pay compensation, so that the same be done in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same shall be situate ; and if any damage or obstruction be occasioned to the railway or works by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good, by the owner, lessee, or occupier of such mines or minerals, and at his own expense ; and if such repair or removal be not forthwith done, or, if the company shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the company to execute the same, and recover from such owner, lessee, or

If company unwilling to purchase, owner may work the mines.

**Sect. 79.** occupier the expense occasioned thereby, by action in any of the superior courts.

**"Before the expiration of such thirty days."**—The limitation of time is for the purpose simply of determining how long the mine-owner's right of working shall be kept in abeyance or suspense, and not to limit the period within which the company must give the counter-notice (*Dixon v. Caledonian, etc. Rail. Co.* (1880), 5 App. Cas. 820, and see note to last section).

**"To work the said mines."**—The "said mines" are the "mines of coal, ironstone, slate, and other materials" mentioned in s. 77, as to which see note. The words have the same meanings in ss. 77—79. See *In re Todd, Birleston & Co. and North Eastern Rail. Co.*, [1903] 1 K. B. 603. If the minerals *in situ* constitute a mine within the meaning of that section then the effect of this section is to enable the mine-owner after thirty days to begin to work, to go on working, and to get all the minerals that he can until he is stopped and intercepted by a notice as to some part of the mine (see *Dixon v. Caledonian, etc. Rail. Co.* (1880), 5 App. Cas. 820, p. 832), and provided he work in a proper manner and according to the usual manner of the district he may work them either by open or surface operations, or by underground excavations (*Midland Rail. Co. v. Robinson* (1889), 15 App. Cas. 19; *Midland Rail. Co. v. Haunchwood Brick and Tile Co.* (1882), 20 Ch. D. 552; *Midland Rail. Co. v. Miles* (1886), 33 Ch. D. 632). In so doing, if he is not stopped, he may remove the support subjacent and adjacent to the railway (see note *infra*, "Support"), and for the purpose of working he may, if it is the custom of the district, enter upon the surface he has conveyed to the company and remove that surface and work his minerals from above downwards, even although the effect may be to destroy the railway (*Ruabon Brick Co. v. Great Western Rail. Co.*, [1893] 1 Ch. D. 427; and for the sequel to this case see *R. v. Great Western Rail. Co.* (1893), 69 L. T. 572). The same principle applies in the case where the company purchase not only the surface but all mines and minerals thereunder except mines of coal. In such a case the landowner may in working the coal mines, work through the minerals sold to the company, and remove part of them and take away the support from the rest (*In re Lord Gerard and London and North Western Rail. Co.*, [1895] 1 Q. B. 459).

**Support.**—It has been decided by a long series of cases that when under this Act a railway company purchases the surface, but not the mines, which are reserved to the landowner, that he may work these mines, and that the company are not entitled to sufficient support to the railway from the portion of the mines and minerals lying under or adjoining it without making compensation to the owner (*Great Western Rail. Co. v. Bennett* (1867), L. R. 2 H. L. 27, affirming *Fletcher v. Great Western Rail. Co.* (1860), 29 L. J. Ex. 253, and approving *Dudley Canal Co. v. Grazebrook* (1830), 1 B. & Ad. 59; *Wyrley Canal Co. v. Bradley*, and *Stourbridge Canal Co. v. Earl of Dudley* (1860), 3 E. & E. 409, these last three cases being under special Acts containing provisions similar to those in this Act as to mines. See also the cases cited *infra* in this note).

According to the general law, when a landowner conveys land but reserves to himself the minerals, he cannot derogate from that grant and work the minerals in such a way as to destroy or permanently damage the surface unless he specially reserves that right in the conveyance (*Hect v. Gill* (1872), L. R. 7 Ch. 699; *Bell v. Earl of Dudley*, [1895] 1 Ch. 182). This principle will be applicable to cases where land is sold to promoters of undertakings, where the minerals are reserved, provided there are no statutory or other provisions affecting the contract. Thus, independently of statute, if land is sold for the purpose of a railway being made upon it, there is impliedly sold all support, both subjacent and adjacent, that is required for the purpose

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## NOTE.

of supporting that railway (*Caledonian Rail. Co. v. Sprot* (1856), 2 Macq. Sc. Ap. 449; *Elliot v. North Eastern Rail. Co.* (1863), 10 H. L. Cas. 333; *North Eastern Rail. Co. v. Crosland* (1862), 32 L. J. Ch. 353; *London and North Western Rail. Co. v. Evans*, [1893] 1 Ch. 16; *Glamorganshire Canal Navigation Co. v. Nizon's Navigation Co., Limited* (1901), 17 T. L. R. 184, 647); and see the cases as to support of sewers in the notes to the Public Health Acts, 1875 and 1883, *post*; also see s. 68 of the Lands Clauses Consolidation Act, note, "Support," *ante*, p. 128. And where a railway company by an Act incorporating the Railways Clauses Act took over land previously sold to a tramway company, with a reservation of minerals, together with all the rights under the tramway company's Acts, the railway company was held to be entitled to an injunction to restrain the mine-owners from taking away the support, and the mine-owners were held entitled to no compensation under this section, inasmuch as in their conveyance to the tramway company they impliedly granted the right to support (*Great Western Rail. Co. v. Cefn Cribbwr Brick Co.*, [1894] 2 Ch. 157).

But if there are statutory provisions, such as in the case of the purchase of mines under this Act, these provisions are to be treated as a code which is to take the place of the general law. The object of these sections was to enable the parties to deal with the land as if there were no mines to be considered. If there are mines and the mine-owner is desirous of working them, he is to be regarded as in the same position as if he had never sold the surface at all. If at the time he desires to work them, the railway company requires any of the minerals to be left for the purpose of support, subjacent or adjacent, then the company must pay compensation in respect thereof. It is, after all, merely a question as to the period of time at which railway companies must acquire and pay for the subjacent and adjacent support of their lines (*Great Western Rail. Co. v. Bennett* (1867), L. R. 2 H. L. 27; *Midland Rail. Co. v. Robinson* (1889), 15 App. Cas. 19). It makes no difference whether the support will be taken away by underground workings, or by open workings on the surface, if such open workings are the usual and proper method of working the minerals in the district. An injunction will not be granted, therefore, to restrain the mine-owner from removing the minerals by quarrying or surface digging, nor will any action lie against him for damage done to the railway by so working (*Midland Rail. Co. v. Haunchwood Brick and Tile Co.* (1882), 20 Ch. D. 552; *Midland Rail. Co. v. Miles* (1886), 33 Ch. D. 632; *Midland Rail. Co. v. Robinson* (1889), 15 App. Cas. 19; *Ruabon v. Great Western Rail. Co.*, [1893] 1 Ch. 427). The case of *Lord Provost of Glasgow v. Farie* (1888), 18 App. Cas. 657, is no exception to this general rule, for in that case the mine-owner was restrained from working the mineral—clay—not on the ground that it could only be worked properly by open workings, but because it did not constitute a mine within the meaning of these sections. See also *Great Western Rail. Co. v. Blades*, [1901] 2 Ch. 624, and note to s. 77 as to the meaning of mines.

If a railway company having purchased the land without the mines, sells part of it as superfluous land, the purchaser will obtain no greater right than the railway company from whom he derived his title, and if the mine-owner in removing the minerals lets down the surface and injures buildings upon it, the purchaser will have no remedy against him in respect thereof (*Pountney v. Clayton* (1883), 11 Q. B. D. 820).

The principle is applicable even where the special Act provides that in working the mines no injury may be done to the works, as this proviso, taken with the other provisions, will be held merely to imply that the person working them must work them in the ordinary and usual mode, and not cause extraordinary or unnecessary damage (*Dudley Canal Co. v. Grazebrook* (1830), 1 B. & Ad. 59).

These sections are also applicable to a case where a landowner grants to a railway company the right to make and maintain a tunnel through his land. Such a grant will not prevent him from working his mines and

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removing the adjacent and subjacent support from the tunnel. If he is required to leave such support he is entitled to receive compensation in respect thereof (*London and North Western Rail. Co. v. Ackroyd* (1862), 31 L. J. Ch. 588). Railway companies are not bound to purchase the support, and if from want of funds or otherwise they decline to do so, the mine-owner may take away the support and destroy the railway, and the railway company in that case will not be bound to restore the line, as the powers of making and maintaining a line are in the absence of compulsory provisions enabling merely, and they have an option to maintain the works or not (*R. v. Great Western Rail. Co.* (1893), 62 L. J. Q. B. 572).

If the working of the mines outside the prescribed distance would have the effect of destroying the support of the surface and of the works thereon, it would appear that the general law as to an owner not being allowed to derogate from his grant would apply, and that the owner would be restrained from taking away that support. See *Elliot v. North Eastern Rail. Co.* (1863), 32 L. J. Ch. 402, a case under a special Act. In another case under a special Act, it was held that the provisions of the Act extended by implication to mines outside the prescribed limit, where necessary, for the support of the works (*Midland Rail. Co. v. Checkley* (1867), L. R. 4 Eq. 19).

**Canals.**—In cases of canals the decisions follow mainly upon the construction of particular statutes, and are not to be regarded as affecting the various Clauses Consolidation Acts. If the words of an Act make a mine-owner liable, if he causes injury to a canal, he will be liable to an action for damages, and will be restrained by injunction if he proceed to work the mines so as to injure the canal, although the canal owners may refuse to purchase or pay compensation for leaving the coal, as he can initiate proceedings and compel them to do so (*Knowles & Sons v. Lancashire and Yorkshire Rail. Co.* (1889), 14 App. Cas. 248; *Cromford Canal Co. v. Cutts* (1848), 5 Rail. Cas. 442). And as to compensation, see *Dunn v. Birmingham Canal Co.* (1872), L. R. 8 Q. B. 42. These cases were distinguished in *Chamber Colliery Co. v. Company of Proprietors of the Rochdale Canal*, [1895] A. C. 564, where it was held that adjacent minerals did not come within the meaning of the section, which only applied to minerals under the canal, and that another section which applied to adjacent minerals only required the canal owners to purchase, if, in their opinion, the canal would be endangered. The mine-owners could only take action if the working of the mines would be damaged, or the canal endangered. They could not, therefore, claim compensation merely because the canal might be damaged by the working if not endangered. This case was followed in *New Moss Colliery Co. v. Manchester, Sheffield and Lincolnshire Rail. Co.*, [1897] 1 Ch. 725.

In some cases, by the terms of the Act under which the canal has been constructed, it has been held that the canal company have in fact purchased the right of support with the land, and no compensation for future damage can be recovered (*Glamorganshire Canal Navigation Co. v. Nixon's Navigation Co.* (1901), 85 L. T. 537; *London and North Western Rail. Co. v. Evans*, [1893] 1 Ch. 16).

**Mining communications.**

**80.** If the working of any such mines under the railway or works, or within the above-mentioned distance therefrom, be prevented as aforesaid by reason of apprehended injury to the railway, it shall be lawful for the respective owners, lessees, and occupiers of such mines, and whose mines shall extend so as to lie on both sides of the railway, to cut and make such and so many airways, headways, gateways, or water levels through the mines,

measures, or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain, and work their said mines; but no such airway, headway, gateway, or water level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions shall be described not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the railway or works, or so as to injure the same, or to impede the passage thereon.

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A railway company purchased some land without the minerals, and thereon constructed three lines of railway so as to form a triangle, part of the land being thus severed by the railways and the triangular part separated from the other land by the lines. Afterwards the company purchased the minerals under such portion of the land as was immediately underneath the lines, so that the landowner was left in possession of the mines within the triangle, which were clay, and could only be properly removed by surface workings. He gave notice of working this clay and of crossing the line of railway for that purpose. On an application for an *interim* injunction to restrain him from crossing the line, it was granted on the ground that it would injure the railway and impede the passage thereon, which a mine-owner may not do under this section, but it was held that he would be entitled under this section to tunnel under the railway in order to work the minerals in the triangle, the company being bound to compensate him under s. 81 for the extra expense of so working (*Midland Rail. Co. v. Miles* (1885), 30 Ch. D. 634). At the trial of the action this was affirmed, it being held that the right of the owner of the mines in the triangle was to work the minerals in and under it by means of passages in or under the railway between that area and any mines lying on the other sides of the three lines, of which he was owner, lessee, or occupier. If he was not owner, lessee, or occupier of land on one side he could not work from that side, although he might have a right of way over such land, and he was entitled to no compensation in respect thereof. His right to compensation under s. 81 would be the extra expense caused by reason of that mode of working, over and above what he would have been put to if he had worked the mines continuously (*S. C.* (1886), 33 Ch. D. 632, p. 648).

81. The company shall from time to time pay to the owner, lessee, or occupier of any such mines extending so as to lie on both sides of the railway all such additional expenses and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands lying over such mines by the railway, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the railway, and for any minerals not purchased by the company which cannot be obtained by reason of making and maintaining the railway; and if any dispute or question shall arise between the company and such owner, lessee, or occupier as aforesaid,

Company to make compensation for injury done to mines;

## Sect. 81

touching the amount of such losses or expenses, the same shall be settled by arbitration.

The compensation payable upon claims arising directly under this section is not to be ascertained and determined under the Lands Clauses Acts, but under the arbitration clauses in this Act (*R. v. London and North Western Rail. Co.*, [1894] 2 Q. B. 512, p. 519). And see note to s. 78, "To make compensation," *ante*, p. 331.

The mine-owners are entitled to recover the additional expenses and losses caused by the railway being constructed before the same have actually been incurred, provided they are imminent and capable of present ascertainment. If not capable of ascertainment, the mine-owner is probably left to his remedy from time to time after his actual outlay (*Whitehouse v. Wolverhampton Rail. Co.* (1869), L. B. 5 Ex. 6, following a principle laid down in *Cromford Canal Co. v. Cutts* (1848), 5 Rail. Cas. 442). Similarly, if the mine-owner claims compensation for injurious affection where part of his mines are taken, his claim must be under the mining sections, and if no interference with the mining operation has actually taken place, his claim under this section would be premature (*Holliday v. Mayor of Wakefield*, [1891] A. C. 81, pp. 93, 94, 97—99). If the injury to works connected with mining operations are directly and immediately occasioned by the taking of the surface, the mine-owner will be entitled to have compensation ascertained along with the value of his interest in the surface (*S. C.*, p. 98), and it may be done at the same time as the amount of compensation is ascertained under s. 78 (*R. v. London and North Western Rail. Co.*, [1894] 2 Q. B. 512).

In *Whitehouse v. Wolverhampton Rail. Co.*, *supra*, the lessee of the mines had been working them continuously from the south side to the north side of the railway, but owing to the intersection of the railway he had to change the site of a pit about to be sunk, as he had intended to place it in the centre of the strip taken by the railway. The site was convenient because it could be worked by the engine of an existing pit; the right to deposit spoil near the site had also been acquired. The new site occasioned by the railway being made could not be worked by the old engine. The lessee, in these circumstances, was held entitled to recover (1) the expense of engine and plant for the new pit; (2) the extra expense of working the engine; (3) the expense occasioned by change of site; (4) extra expense of raising pit frames and depositing spoil; (5) the cost of providing new land for spoil.

As to compensation in respect of having to tunnel under the railway to get at the minerals, see *Midland Rail. Co. v. Miles* (1886), 33 Ch. D. 632, and note to s. 80.

and also for  
any airway  
or other  
work made  
necessary by  
the railway.

**82.** If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines the working whereof shall have been so prevented as aforesaid (and not being the owner, lessee, or occupier of such mines), by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the company shall make full compensation to such owner or occupier of the surface lands for the loss or damage so sustained by him.

**83.** For better ascertaining whether any such mines are being worked or have been worked so as to damage the railway or works, it shall be lawful for the company, after giving twenty-four hours notice in writing, to enter upon any lands through or near which the railway passes wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith; and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the railway to the parts of such mines which are being worked or about so to be.

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Power to company to enter and inspect the working of mines.

**84.** If any such owner, lessee, or occupier of any such mine shall refuse to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the company a sum not exceeding twenty pounds.

Penalty for refusal to inspect.

**85.** If it appear that any such mines have been worked contrary to the provisions of this or the special Act, the company may, if they think fit, give notice to the owner, lessee, or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the railway, and preventing injury thereto; and if after such notice any such owner, lessee, or occupier do not forthwith proceed to construct the works necessary for making safe the railway, the company may themselves construct such works, and recover the expense thereof from such owner, lessee, or occupier, by action in any of the superior courts.

If mines improperly worked, the company may require means to be adopted for the safety of the railway.

## 86—107. . . .

Sections 86—107 deal with the carrying of passengers and goods upon the railway and the tolls to be taken.

## 108—111. . . .

Sections 108—111 deal with the regulating the use of the railway.

## 112, 113. . . .

Sections 112, 113 deal with leasing the railway.

## 114—125. . . .

Sections 114—125 deal with engines and carriages.

**Sect. 126.** And with respect to the settlement of disputes by arbitration, be it enacted as follows :

This heading covers ss. 126—137. *Cf.* ss. 25—37 of the Lands Clauses Consolidation Act, 1845, and notes thereto, and also the Arbitration Act, 1889, *post*.

Appointment of arbitrators when questions are to be determined by arbitration.

**126.** When any dispute authorised or directed by this or the special Act, or any Act incorporated therewith, to be settled by arbitration shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator to whom such dispute shall be referred ; and every appointment of an arbitrator shall be made on the part of the company under the hand of the secretary or any two of the directors of the company, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation ; and such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made ; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation ; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matters so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

Vacancy of arbitrator to be supplied.

**127.** If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable to act, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place ; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed *ex parte* ; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or incapacity as aforesaid.

**128.** Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under this or the special Act ; and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place ; and the decision of every such umpire on the matters so referred to him shall be final.

**Sect. 128.**

Appointment of umpire.

**129.** If in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days after the request of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire ; and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

Board of Trade empowered to appoint an umpire, on neglect of the arbitrators.

**130.** If where a single arbitrator shall have been appointed such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special Act, in the same manner as if such arbitrator had not been appointed.

In case of death of single arbitrator the matter to begin de novo.

**131.** If where more than one arbitrator shall have been appointed either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed ex parte, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If either arbitrator refuse to act the other to proceed ex parte.

**132.** If where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time, if any, as shall have been appointed for that purpose by both such arbitrators under their hands, the matter referred to them shall be determined by the umpire to be appointed as aforesaid.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

**133.** The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Power for arbitrators to call for books, etc.

**Sect. 134.**

Arbitrator  
and umpire  
to make  
declaration.

**134.** Before any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall, in the presence of a justice, make and subscribe the following declaration ; that is to say,

“ I, *A.B.*, do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me, under the provisions of the Act [*naming the special Act*].”

*A.B.*

“ Made and subscribed in the presence of .”

And such declaration shall be annexed to the award when made ; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

Costs to be  
in the discre-  
tion of the  
arbitrators.

**135.** Except where by this or the special Act, or any Act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators.

Submission  
to arbitration  
may be made  
a rule of  
court.

**136.** The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

The award  
not to be set  
aside for  
matter of  
form.

**137.** No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form.

Service of  
notices upon  
company.

**138.** And be it enacted, that any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the company, may be served by the same being left at or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary then by being given to any one director of the company.

Section 135 of the Companies Clauses Consolidation Act, 1845, is identical with this section. Section 134 of the Lands Clauses Consolidation Act, 1845, is similar, but not quite identical, see notes thereto, *ante*, p. 269.

“**The principal office.**”—The principal office of a railway company is that office where the general superintendence and management of the business of the railway is carried on. It does not matter how important another station may be at which there is an office, if the staff and the central government is elsewhere. Thus service upon the Great Western Railway Company at their office in Bristol was held bad, as the line was managed

from Paddington (*Garton v. Great Western Rail. Co.* (1858), E. B. & E. 837; *Palmer v. Caledonian Rail. Co.*, [1892] 1 Q. B. 823; and *cf. In re Brown v. London and North Western Rail. Co.* (1863), 4 B. & S. 326). Sect. 138.

NOTE.

A railway company had the principal part of their line in Scotland and managed it from Glasgow, but a small portion was in England terminating at Carlisle. The company while incorporating the Scottish Consolidation Acts for the Scotch part, also incorporated the English Acts in respect of the part in England. It was held that it was a Scotch company, that the principal office was at Glasgow, and that service at the Carlisle office was bad. It was also held that Order 9, r. 8, of the Rules of the Supreme Court had no application to cases where there is statutory provision as to service (*Palmer v. Caledonian Rail. Co.*, [1892] 1 Q. B. 823; dissenting from *Wilson v. Caledonian Rail. Co.* (1850), 5 Ex. 822; *cf. Mackereth v. Glasgow and South Western Rail. Co.* (1873), L. R. 8 Ex. 149).

"Or being given personally to the secretary."—Service personally upon the secretary of a Scotch company while in London would probably be good under the Scotch Companies Clauses Act, s. 137, but the English Act is not applicable (*Wilson v. Caledonian Rail. Co.* (1850), 5 Ex. 822, dissented from in part in *Palmer v. Caledonian Rail. Co.*, [1892] 1 Q. B. 823, and *cf. Evans v. Dublin and Drogheda Rail. Co.* (1845), 14 L. J. Ex. 245).

**139.** And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if before action brought in respect thereof such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court. Tender of  
amends.

## 140—160. . . .

Sections 140—160 deal with the recovery of penalties, and are similar in effect to those in the Lands Clauses Consolidation Act, 1845.

## 161. . . .

Section 161 deals with moneys paid into the Bank of Ireland.

## 162, 163. . . .

Sections 162, 163, deal with access to the special Act, and are similar in effect to ss. 150, 151 of the Lands Clauses Consolidation Act, 1845.

## 164. . . .

Section 164 excludes Scotland from the application of the Act.

## THE MARKETS AND FAIRS CLAUSES ACT, 1847.

(10 & 11 VICT. c. 14.)

*An Act for consolidating in one Act certain provisions usually contained in Acts for constructing or regulating Markets and Fairs.*  
[23rd April 1847.]

Extent  
of Act.

[Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorising the construction or regulation of markets and fairs, and that as well as for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves : Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that] (a) this Act shall extend only to such markets or fairs as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith ; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

(a) The preamble was repealed by the Statute Law Revision Act, 1891.

This Act may be incorporated in the same manner as the Lands Clauses Consolidation Act, 1845. See s. 5, *ante*, p. 9.

The clauses here set out alone deal with the subject of this book ; the other sections deal with the holding and regulation of the market or fair.

\* \* \* \* \*

And with respect to the construction of the market or fair, and the works connected therewith, be it enacted as follows :

Construction  
of markets  
and fairs to  
be subject  
to the pro-  
visions of

**6.** Where by the special Act the undertakers shall be empowered, for the purpose of constructing the market or fair, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to

them, be subject to the provisions and restrictions contained in this Act and in the Lands Clauses Consolidation Act, 1845, when the special Act relates to England or Ireland, and to the provisions and restrictions contained in this Act and the Lands Clauses Consolidation (Scotland) Act, 1845, when the special Act relates to Scotland; and the undertakers shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the special Act, or injuriously affected by the construction of the works thereby authorised, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other persons, by reason of the exercise, as to such lands, of the powers vested in the undertakers by this or the special Act, or any Act incorporated therewith; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the said Land Clauses Consolidation Acts respectively for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned Acts respectively shall be applicable to determine the amount of any such compensation, and to enforce payment or other satisfaction thereof.

**Sect. 6.**

this Act and  
one of the  
Lands  
Clauses  
Consolidation  
Acts, 1845.

*The special Act.*—By s. 2 it is provided that “the expression ‘the special Act’ used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the construction or regulation of a market or fair, and with which this Act shall be incorporated.”

*The lands* are the lands authorised to be taken or used for the purposes of the special Act, and include messuages, lands, tenements, and hereditaments of any tenure. See definition in the Lands Clauses Consolidation Act, 1845, and note, *ante*, p. 4.

*The undertakers* mean the persons authorised by the special Act to construct or regulate the market or fair (s. 2).

7. If any omission, misstatement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described or purporting to be described in the special Act, or in the schedule thereto, the undertakers, after giving ten days’ notice to the owners, lessees, and occupiers of the lands affected by such proposed correction, may apply in England or Ireland to two justices, and in Scotland to the sheriff, for the correction thereof; and if it appear to such justices or sheriff that such omission, misstatement, or wrong description arose from mistake, they or he shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, misstatement, or wrong description; and such certificate shall be

Errors and  
omissions in  
special Act  
or schedules  
thereto may  
be corrected  
by justices,  
etc., who  
shall certify  
the same.

**Sect. 7.** deposited in England or Ireland with the clerk of the peace, and in Scotland with the sheriff clerk, of the county in which the lands affected thereby shall be situated, or, where any such lands are situated in a royal burgh in Scotland, with the town clerk of such burgh; and such certificate shall be kept by such clerk of the peace, sheriff clerk, or town clerk, with the other documents to which they relate, and thereupon the special Act or schedule shall be deemed to be corrected according to such certificate; and the undertakers may make the works in accordance with such certificate, as if such omission, misstatement, or wrong description had not been made.

Certificate to be deposited.

*Cf.* the almost identical provision in s. 7 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 284.

Copies of alterations, etc., to be evidence.

**8.** Copies of any such alteration or correction thereof, or extracts therefrom, certified by any such clerk of the peace, sheriff clerk, or town clerk, in whose custody the same may be, which certificate such clerk shall give to all parties interested when required, shall be received in all courts of justice and elsewhere as evidence of the contents thereof.

Additional land may be taken for extraordinary purposes.

**9.** The undertakers, in addition to the lands authorised to be taken compulsorily, or to be appropriated by them for the purposes of the market or fair, under the powers of this and the special Act, may appropriate any lands vested in them, or may contract with any person willing to sell the same for the purchase of any land within the limits of the special Act, not exceeding in the whole the prescribed number of acres for extraordinary purposes; (that is to say,)

For providing slaughter-houses (if the undertakers shall be authorised by the special Act to provide slaughter-houses), and houses and places for weighing carts:

For making convenient roads and approaches to the market or fair:

For any other purpose which may be necessary for the formation or convenient use of the market or fair.

*Cf.* the corresponding provision in s. 45 of the Railways Clauses Consolidation Act, 1845, and see notes thereto, *ante*, p. 306.

By the Public Health Act, 1875, ss. 166—169, urban sanitary authorities—now urban district councils—are empowered in certain cases to provide a market place and market house, and other conveniences, and also a slaughter-house, and to purchase or take on lease lands for the purpose. The sections of this Act with respect to the construction of the market or fair, and the works connected therewith, are not incorporated. Lands may, however, be

taken or purchased for the purposes of that Act as provided in ss. 175, 176 thereof. See *post*.

The Public Health Act, 1875, however, does not authorise any provision for providing land for a fair.

As to slaughter-houses, see s. 17 of this Act, *post*.

By the Markets and Fairs (Weighing of Cattle) Act, 1887 (50 & 51 Vict. c. 27), amended by the Markets and Fairs (Weighing of Cattle) Act, 1891, market authorities, unless exempted by order of the Board of Agriculture, must provide suitable accommodation for weighing cattle.

**Sect. 9.**

**NOTE.**

**10.** Subject to the provisions in this and the special Act, and any Act incorporated therewith, the undertakers, for the purpose of constructing a place for holding the market or fair, may execute any of the following works ; (that is to say,)

They may enter upon any lands described in the special Act, or the schedule thereto, and other lands purchased by them or belonging to them, and set out such parts as they think necessary for the purposes of the market or fair, and thereupon from time to time build and maintain such market places or places for fairs, and such stalls, sheds, pens, and other buildings or conveniences, for the use of the persons frequenting the market or fair, and for weighing and measuring goods sold in the market or fair, and for weighing carts, as they may think necessary :

They may from time to time on such lands as aforesaid make and maintain all such roads and approaches as they may think necessary for the convenient use of the persons resorting to the market or fair.

If land is described in the schedule, the undertakers are the proper parties to say whether it is necessary or not, and if wanted for the purpose of erecting a covered building for market purposes, as well as the market house, it will be wanted for the purposes of the special Act, as by this Act the singular may mean the plural if not repugnant, and there may be two market houses if required (*Richards v. Scarborough Public Market Co.* (1853), 23 L. J. Ch. 110).

**11.** Provided always, that in the exercise of the powers by this or the special Act granted the undertakers shall do as little damage as can be, and shall make full satisfaction, in manner herein and by the special Act and any Act incorporated therewith provided, to all parties interested for all damages sustained by them by reason of the exercise of such powers.

*Cf.* the similar provision in the proviso to s. 16 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 290, and see the cases there cited. The subjects of compensation are doubtless land and interests in land although the terms of this section would appear to be more extensive. *Cf.* s. 308 of the Public Health Act, 1875, *post*.

\* \* \* \* \*

Undertakers, subject to provisions of this and the special Act, may execute the works herein named.

Undertakers to make satisfaction for damage done.

**Sect. 17.** And with respect to slaughter-houses, be it enacted as follows :

Power to  
erect  
slaughter-  
houses if  
authorised  
by the Act.

**17.** Where by the special Act the undertakers shall be empowered to provide slaughter-houses they may from time to time erect, on any land purchased by them under the provisions of this or the special Act, or any Act incorporated therewith, any buildings, or set apart and improve any buildings belonging to them for the slaughtering of cattle. . . .

No exemp-  
tion from  
indictments.

**18.** Provided that nothing in this or the special Act, or any Act incorporated therewith, shall protect the undertakers from an indictment for nuisance, or from any other legal proceeding in respect of any such slaughter-house as aforesaid.

As the undertakers are not given statutory power to create a nuisance, the fact that they have taken all reasonable care to prevent a slaughter-house from being a nuisance will not be a legal excuse if it in fact is one. See *Rapier v. London Tramways Co.*, [1893] 2 Ch. 588 ; and see the notes to s. 68 of the Lands Clauses Consolidation Act, 1845, p. 117, and *cf. Meur's Brewery Co. v. City of London Electric Lighting Co.* (1894), 70 L. T. 762.

Sections 58 and 59 deal with access to the special Act and are identical with ss. 90 and 91 of the Waterworks Clauses Act, *post*.

## THE WATERWORKS CLAUSES ACT, 1847.

(10 & 11 VICT. c. 17.)

*An Act for consolidating in one Act certain provisions usually contained in Acts authorising the making of Waterworks for supplying Towns with Water.* [23rd April 1847.]

\* \* \* \* \*

This Act applies only to such waterworks as have been authorised by Act of Parliament passed after April 23rd, 1847, and which declare that this Act is incorporated therewith (s. 1).

A group of clauses may be incorporated or excepted in a special Act in the same manner as under the Lands Clauses Consolidation Act, 1845. See s. 5 thereof, *ante*, p. 9.

The groups of clauses here set out and which alone bear on this subject are—

1. With respect to the construction of the waterworks (ss. 6—15).
2. With respect to the construction of works for the accommodation of lands adjoining the waterworks (ss. 16, 17).
3. With respect to mines (ss. 18—27).
4. With respect to the breaking up of streets for the purpose of laying pipes (ss. 28—34).
5. With respect to access to the special Act (ss. 90, 91).

The Waterworks Clauses Act, 1863, has no application to this subject.

And with respect to the construction of the waterworks, be it enacted as follows :

This heading includes ss. 6—15.

**6.** Where by the special Act the undertakers shall be empowered, for the purpose of constructing or supplying waterworks, to take or use any lands or streams otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act, and if the waterworks be situated in England or Ireland, to the provisions and restrictions contained in the Lands Clauses Consolidation Act, 1845, and, if the waterworks be situated in Scotland, the provisions and restrictions contained in the Lands Clauses Consolidation, Scotland, Act, 1845 ; and shall make to the owners and occupiers of and all other parties interested in any lands or streams taken or used for the purposes of the special Act, or injuriously affected by the construction or maintenance of the works thereby autho-

Construction of water-works to be subject to the provisions of this Act and the Lands Clauses Consolidation Acts, 1845.

**Sect. 6.**

rised, or otherwise by the execution of the powers thereby conferred, full compensation for the value of the lands and streams so taken or used, and for all damage sustained by such owners, occupiers, and other persons, by reason of the exercise, as to such lands and streams, of the powers vested in the undertakers by this or the special Act, or any Act incorporated therewith; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the said Lands Clauses Consolidation Acts respectively for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned Acts respectively shall be applicable to determine the amount of any such compensation, and to enforce payment or other satisfaction thereof.

*"The special Act."*—By s. 2 it is provided that "the expression 'the special Act' used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the construction of waterworks and with which this Act shall be incorporated."

*"The undertakers."*—Section 2 also provides that "the undertaking" shall mean "the waterworks and works connected therewith by the special Act authorised to be constructed," and "the undertakers" shall mean "the persons by the special Act authorised to construct the waterworks." Section 3 provides also that "the waterworks" shall have the same meaning as "the undertaking."

*"Lands or streams."*—The definition of lands is practically identical with that in the Lands Clauses Consolidation Act, 1845, s. 3, *ante*, p. 4, and in the Railways Clauses Act and in this section lands include "mines" (*Holliday v. Mayor of Wakefield*, [1891] 1 A. C. 81). Section 3 provides that "the word 'streams' shall include springs, brooks, rivers, and other running waters."

**"Full compensation for the value of the lands and streams so taken or used."**—With this section may be compared the somewhat similar provision in the Railways Clauses Act, 1845, s. 6, *ante*, p. 282.

When land is taken the principles of compensation will be found in s. 63 of the Lands Clauses Consolidation Act, 1845, and the notes thereto, *ante*, p. 96; when no land is taken, the principles of compensation for injuriously affecting land will be found in the notes to s. 68, *ante*, p. 115.

As regards streams, this section draws the same distinction which the Lands Clauses Acts do as regards lands. If a stream is taken, the compensation must be assessed according to the principles laid down in s. 63 of the Lands Clauses Consolidation Act, 1845, and notes; if injuriously affected, compensation must be made under s. 68 of that Act (*Ferrand v. Corporation of Bradford* (1856), 21 Beav. 412). The complete diversion of a stream is a taking or using of the stream, and if promoters of an undertaking desire to divert a stream for the purposes of the undertaking, they must give a notice to treat under s. 18 of the Lands Clauses Consolidation Act, 1845, and proceed to have the price determined as provided thereafter, or they may enter on making a deposit and giving a bond as provided in s. 85 of that Act. If they do not proceed in one or other of these ways the owner will be entitled to an injunction to restrain them (*S. C.*).

The entry upon the bed of a stream and diverting part of the stream would be, as regards the proprietor who owned the bed, a taking of the lands and stream, but as regards a riparian proprietor lower down the stream, his rights would be only for compensation for diverting water which would otherwise have reached him. This would be an injurious affection of his land and he would be entitled to compensation under s. 12 of this Act, and the procedure to ascertain the amount would be that provided in s. 68 of the Lands Clauses Consolidation Act, 1845 (*Bush v. Trowbridge Waterworks Co.* (1875), L. R. 10 Ch. 459; *Page v. Kettering Waterworks Co.* (1892), 8 T. L. R. 228; and see notes to s. 12, *post*).

If promoters have power to divert the whole of a stream and give notice of their intention to do so to a riparian owner, he is entitled at once to be paid the full price for the same, and he is not bound to wait till the stream has been diverted and apply for compensation from time to time as the promoters may happen to want the water (*Stone v. Corporation of Yeovil* (1876), 2 C. P. D. 99). Similarly, if promoters purchase a stream, but do not within the time limited for the execution of the works, divert or take it, the property is nevertheless in them and they may divert it without further compensation, if empowered to carry out works by another statute (*Girdwood v. Belfast Water Commissioners* (1877), 1 L. R. Ir. 28).

**Compensation water.**—In many local Acts empowering promoters to impound streams, a clause is inserted which provides that the promoters shall send down a continuous flow of water throughout the year. This is usually called compensation water, and it is roughly estimated that a steady flow of one-fourth to one-third of the available supply is equivalent for the purposes of mills to the ordinary flow. Clauses are usually inserted allowing mill-owners to recover penalties and compensation for injurious affection on failure to send down the supply. For a case in which such penalties were recovered in full by each of several mill-owners, see *Beaumont v. Mayor, etc. of Huddersfield* (1902), 67 J. P. 57.

In a case where the special Act provided that as full compensation for all water taken, compensation water should be given, it was held that the owner of a lake could not claim any other compensation in respect of the water in the lake, but that he was entitled to compensation for any injury to his other riparian rights, or other rights in the soil (*Gough v. Aspatria, Silloth and District Joint Water Board* (1903), 67 J. P. 137, reported as to another point in [1903] 1 K. B. 574).

In *Lord Blantyre v. Babbie, infra*, the special Act provided that compensation water should be given in respect only of the rights of the millowners, and other riparian rights in the stream flowing from the loch. The owner of the loch was held not to be debarred thereby from claiming compensation for the water taken from the loch, although he could not claim for injury to his riparian interest in the stream. See more particularly at p. 651, *per* Lord Watson.

**"Owners and occupiers and other persons interested."**—All persons having interest in lands or streams taken or used must be compensated, and the same rule is applicable if the special Act authorises water to be taken from a loch. Thus, where a proprietor had granted certain mills on a stream forming the outlet to two lochs nearly surrounded by his property, together with his whole rights of water and water power connected with the said mills, but reserving his rights in the lochs, except the rights connected with the mills, it was held that promoters of waterworks could not, by acquiring the rights of the grantee in the water, draw off the water from the lochs for the supply of a town, as they were thereby depriving the landowner of his rights in the water (*Lord Blantyre v. Babbie* (1888), 13 App. Cas. 631).

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NOTE.

## Sect. 6.

## NOTE.

As regards underground water, see *Corporation of Bradford v. Pickles*, [1895] A. C. 587, and notes to s. 12, *post*, p. 354.

**Measure of compensation—Special adaptability.**—In estimating the value of a stream, it is necessary to take into account the use to which it can be put relatively to the land. Practically speaking, the value of water must be measured by the deterioration of the value of the land occasioned by its loss. Its value for fishing should be taken into account and also its availability for purposes of irrigation, watering cattle, turning a mill, or as ornamental water (*Stone v. Corporation of Yeovil* (1876), 2 C. P. D. 99). If a stream may be adapted for purposes other than for which it has been used, that adaptability should be taken into account in estimating the value although the owner may never have obtained one farthing for the use of the stream. Evidence, therefore, of an offer by another water company to purchase the stream ought not to be rejected (*Trent-Stoughton v. Barbados Water Supply Co.*, [1893] A. C. 502).

In the case of *In re Countess Ossalinsky and Corporation of Manchester* (1883), of which a report will be found in the Appendix, the arbitrator had, in his award, taken into account the enhanced value of the land by reason of the water that may be collected, diverted, and impounded upon it, and also by reason of its natural and peculiar adaptation for the construction of a reservoir, and a divisional court were of opinion that he had acted rightly in so doing. A similar opinion seems to have been expressed by the Court of Appeal in *Riddell v. Newcastle and Gateshead Water Co.* (reported in the Appendix). The same view was taken by WRIGHT, J., in *In re Gough and Aspatia, Silloth and District Joint Water Board*, [1903] 1 K. B. 574, where he held that in order to take into account the enhanced value it was not necessary to show that there were people to compete for the site, if the site was specially suitable for a reservoir, and if there were populous areas within such a distance as would naturally require a water supply, and might purchase the site in question for that purpose. In another case he held that an arbitrator had acted rightly in taking into account the enhanced value of a piece of land by reason of the fact that it and two other pieces of land together were specially adaptable for a reservoir, but they were not to be valued as one site and assessed at an equal amount per acre (*In re Mayor of Tynemouth and Duke of Northumberland* (1903), 19 T. L. R. 630). In the same case a claim for additional education expenses likely to be caused by reason of the children of the workmen engaged on the works was considered too remote.

If promoters of waterworks are empowered to take water from a loch, the water of which is partly retained therein by an artificial embankment, the fact that it is so retained is a proper subject for an arbitrator to take into account in assessing the value of the water. The price of water in an artificial reservoir cannot be estimated on the same principles as that of water in a wholly natural basin; the cost of works for storing it must be taken into account (*Lord Blantyre v. Babbie* (1888), 13 App. Cas. 631).

Errors and omissions in plans, etc., may be corrected by justices, etc., who shall certify the same.

7. If any omission, misstatement, or wrong description shall have been made of any lands or streams, or of the owners, lessees, or occupiers of any lands or streams, described on the plans or books of reference deposited in compliance with the Standing Orders of either House of Parliament, or in the schedule to the special Act, the undertakers, after given ten days' notice to the owners, lessees, and occupiers of the lands and streams affected by such proposed correction, may apply in England or Ireland

to two justices, and in Scotland to the sheriff, for the correction thereof; and if it appear to such justices or sheriff that such omission, misstatement, or wrong description arose from mistake, they or he shall certify the same accordingly; and shall in such certificate state the particulars of any such omission, misstatement, or wrong description; and such certificate, with the other documents to which it relates, shall be deposited in England or Ireland with the clerk of the peace, and in Scotland with the sheriff clerk, of the several counties in which the lands or streams affected thereby are situated, or, where any such lands or streams are situated in a royal burgh in Scotland, with the town clerk of such burgh; and such certificate shall be kept by such clerks of the peace, sheriff clerks, or town clerks respectively with the other documents to which they relate; and thereupon such plan, book of reference, or schedule shall be deemed to be corrected according to such certificate; and the undertakers may make the works in accordance with such certificate, as if such omission, misstatement, or wrong description had not been made.

Sect. 7.

Certificate,  
etc., to be  
deposited.

See the somewhat similar provision in the Railways Clauses Act, 1845, s. 7, and the notes thereto, *ante*, p. 284. In respect of interests in land, which have by mistake been omitted to be purchased, see s. 124 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 250.

For clerk of the peace, read now clerk to the county council.

8. The undertakers shall not begin to execute the waterworks unless they shall have previously deposited with the clerk of the peace in England or Ireland, and the sheriff clerk in Scotland, of every county, and the town clerk of every royal burgh in Scotland, in which the waterworks shall be situated, a plan and section of all such alterations from the original plan and section (if any) as shall have been approved of by Parliament, on the same scale and containing the same particulars as the original plan and section of the waterworks, and shall also have deposited with the parish clerks of the several parishes in England, and the clerks of the unions of the several parishes in Ireland, and the schoolmasters of the several parishes in Scotland, in which such alterations shall have been authorised to be made, copies or extracts of or from such plans and sections as shall relate to such parishes respectively.

Works not  
to be pro-  
ceeded with  
until plans of  
all alterations  
authorised by  
Parliament  
have been  
deposited.

*Cf.* s. 8 of the Railways Clauses Consolidation Act, *ante*, p. 285.

For "clerk of the peace" read "clerk to the county council," and for "parish clerk in rural districts having a parish council," read "clerk to the parish council."

9. The said clerks of the peace, sheriff clerks, and town clerks, parish clerks, clerks of unions, and schoolmasters shall receive the said plans and sections of alterations, and copies and extracts

Clerks of the  
peace, etc.,  
to receive  
plans of  
alterations.

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etc., and  
allow inspection.

7 Will. 4 &  
1 Vict. c. 83.

thereof respectively, and shall keep the same, as well as the said original plans and sections and shall allow all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of the original plans and sections by an Act passed in the first year of the reign of her Majesty, intituled an Act to compel clerks of the peace for counties, and other persons, to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament (a).

(a) The Parliamentary Documents Deposit Act, 1837.

Copies of  
plans and  
alterations,  
etc., to be  
evidence.

**10.** Copies of the said plans and books of reference, or of any alteration or correction thereof or extracts therefrom, certified by any such clerk of the peace, sheriff clerk, or town clerk, which certificate such clerk shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Not to  
deviate  
beyond limits  
defined upon  
plans, etc.

**11.** The undertakers, in constructing the waterworks, shall not deviate from the line of the works laid down in the said plan more than the prescribed number of yards, and when no number of yards is prescribed not more than ten yards, nor in any case to any greater extent than the line of lateral deviation described in the said plans with respect to such works, nor take nor use, for the purpose of such deviation, the lands of any person not mentioned in the books of reference, without his previous consent in writing, unless the name of such person shall have been omitted by mistake, and the fact that such omission happened from mistake shall have been certified in manner hereinbefore provided.

*Cf.* ss. 14 and 15 of the Railways Clauses Consolidation Act, 1845, and see the cases as to deviation in the notes thereto, *ante*, p. 289.

A special Act empowered commissioners to take water from a river for the supply of a township on condition of their constructing (*inter alia*) a reservoir with conduit to supply compensation water to millowners. The position, contour, and capacity of the reservoir, and the height of the embankment were prescribed by the Act, with the usual provision for deviation. In constructing the reservoir, the commissioners curtailed it by more than one-third of its length and nearly two-thirds of its capacity, and placed the embankment higher up the river than the point fixed by the Act, and so that the capacity could not be enlarged in the event of the supply of compensation water proving insufficient. The conduit was not made according to the Act, but was said to be substantially equivalent. In an action by the millowners, it was held that, although no actual damage was proved, they were entitled to a declaration that the reservoir and conduit

were not in accordance with the provisions of the Act, and to an injunction restraining the commissioners from taking or using the waters of the river or from interfering with the flow of the river otherwise than as authorised by the Act (*Herron v. Rathmines Improvement Commissioners*, [1892] A. C. 498).

**Sect. 11.**

**NOTE.**

12. Subject to the provisions and restrictions in this and the special Act, and any Act incorporated therewith, the undertakers may execute any of the following works for constructing the waterworks ; (that is to say,)

Undertakers, subject to provisions of this and the special Act, may execute the works herein named.

They may enter upon any lands or other places described on the said plans and in the said books of reference, and take levels of the same, and set out such parts thereof as they shall think necessary, and dig and break up the soil of such lands, and trench and sough the same, and remove or use all earth, stone, mines, minerals, trees, or other things dug or gotten out of the same :

They may from time to time sink such wells or shafts, and make, maintain, alter, or discontinue such reservoirs, waterworks, cisterns, tanks, aqueducts, drains, cuts, sluices, pipes, culverts, engines, and other works, and erect such buildings, upon the lands and streams authorised to be taken by them, as they shall think proper, for supplying the inhabitants of the town or district within the prescribed limits with water :

They may from time to time divert and impound the water from the streams mentioned for that purpose in the special Act, or the said plans or books of reference, and alter the course of any such streams, not being navigable, and also take such waters as may be found in and under or on the lands to be taken for constructing the works :

Provided always, that in the exercise of the said powers the undertakers shall do as little damage as can be, and in all cases where it can be done shall provide other watering places, drains, and channels, for the use of adjoining lands, in place of any such as shall be taken away or interrupted by them, and shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers.

Undertakers to make compensation for damages.

*Cf.* the similar proviso in the case of railways in s. 16 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 290, and see the notes thereto, and also see the notes to s. 18 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 30, 33, for the cases relating to land authorised to be taken and for the purposes of the undertaking.

The undertakers can only take the land they are authorised to take and for the construction of the works authorised to be made. They cannot, under this section, take land for collateral and auxiliary works unless the

**Sect. 12.****NOTE.**

special Act authorises them to do so (*Simpson v. South Staffordshire Waterworks Co.* (1865), 34 L. J. Ch. 381, p. 390).

As to the rights of riparian owners, see Michael and Will on "Gas and Water."

**"Erect such buildings."**—Section 93 of this Act provides that nothing herein shall exempt the undertakers from any act for improving the sanitary condition of towns and populous districts. A company erecting buildings under an Act with which s. 93 is incorporated, are therefore bound by the provisions of the Public Health (Building in Streets) Act, 1888 (*Grand Junction Waterworks Co. v. Hampton Urban District Council* (1898), 67 L. J. Q. B. 903), and also by byelaws under s. 157 of the Public Health Act, 1875 (*Uckfield Rural District Council v. Crouborough District Water Co.*, [1899] 2 Q. B. 664).

**"For all damage sustained."**—This section corresponds in effect to s. 68 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 110, and if no lands or streams are taken but either are injuriously affected, the person who suffers damage is entitled to compensation under this section; but in such cases the assessment and payment of compensation need not be made until after the injury has been committed. Thus, the diversion of part of a stream which would have flowed through the plaintiff's land is an injurious affecting (*Bush v. Trenchbridge Waterworks Co.* (1875), L. R. 10 Ch. 459, and see notes to s. 6 of this Act, *ante*, p. 350). If, however, brooks running into a river are diverted, but the bulk of the water is returned into the river above where certain mills are situated, the millowners are only entitled to be compensated in respect of the water actually abstracted from the volume of the river and not for the whole amount originally diverted (*Page v. Kettering Waterworks Co.* (1892), 8 T. L. R. 228).

For the principles of compensation, see notes to s. 68 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 115.

If promoters of waterworks endeavour to deprive any person having common law rights of these rights, they must pay for them. Thus, where promoters obtained water from certain springs, and a section of their Act provided that no person should do any act whereby the waters of these springs should be diminished, and they refused to purchase the rights of the owner of the hill from which these springs issued, he was held to be entitled to tunnel through the hill and drain the water from the springs, and the court refused an injunction to restrain him (*Corporation of Bradford v. Pickles*, [1895] A. C. 587, and see as to underground water, *Chasemore v. Richards* (1859), 7 H. L. Cas. 349; *Acton v. Blundell* (1843), 12 M. & W. 324, 354; and *cf. Grand Junction Canal Co. v. Shugar* (1871), L. R. 6 Ch. 483).

As the owner of land has no right to underground water flowing in undefined channels, he cannot recover compensation if it is drained off from beneath his land (*New River Co. v. Johnson* (1860), 2 E. & E. 435; *R. v. Metropolitan Board of Works* (1863), 3 B. & S. 710; *Bradford Corporation v. Ferrand*, [1902] 2 Ch. 655). Water percolating and becoming dissipated whether on the surface or beneath is not a stream (*McNab v. Robertson*, [1897] A. C. 129). The word "stream," in its primary and natural sense, denotes a body of water having as such body a continuous flow in one direction. See *S. C.*, *per* Lord WATSON, p. 134.

If the waterworks company stop up a stream at a certain point they are entitled to the full flow of water existing at this point at the time they were authorised to do so, but they have no right to stop a person using water above who at that time was authorised to do so, and a person who makes an artificial cutting, and so brings water to a stream which did not go there before, can *prima facie* cut it off if he chooses (*Brymbo Water Co. v. Lester's Lime Co.* (1894), 8 R. 329).

See also s. 6 of this Act and notes thereto, *ante*, p. 349.

**13.** Every person who shall wilfully obstruct any person **Sect. 13.** acting under the authority of the undertakers in setting out the line of the works, or pull up or remove any poles or stakes driven into the ground for the purpose of setting out the line of such works, or deface or destroy any works made for the same purpose, shall be liable to a penalty not exceeding five pounds for every such offence. **Penalty for obstructing construction of works.**

**14.** After the streams or supplies of water hereby or by the special Act authorised to be taken by the undertakers shall have been so taken, every person who shall illegally divert or take the waters supplying or flowing into the streams so taken, or any part thereof, or who shall do any unlawful act whereby the said streams or supplies of water may be drawn off or diminished in quantity, and who shall not immediately repair the injury done by him, on being required so to do by the undertakers so as to restore the said waters to the state in which they were before such act, shall forfeit to the undertakers any sum which shall be awarded in England or Ireland by two justices, and in Scotland by the sheriff, not exceeding five pounds for every day during which the said supply of water shall be diverted or diminished by reason of any act done by or by the authority of such person, and any sum so forfeited shall be in addition to the sum which he may be lawfully adjudged liable to pay to the undertakers for any damage which they may sustain by reason of their supply of water being diminished; and the payment of the sum so forfeited shall not bar or affect the right of the undertakers to bring or raise an action at law against such person for the damage so committed. **Penalty for illegally diverting water.**

The effect of this section is not to limit a landowner's right in a stream or other water if he has not been compensated in respect thereof. See *Corporation of Bradford v. Pickles*, [1895] A. C. 587.

**15.** Provided always, that nothing here contained shall prevent the owners and occupiers for the time being of lands through or by which such streams shall flow from using the waters thereof in such manner and to such extent as they might have done before the passing of the special Act, unless they shall have received compensation in respect of their right of so using such water. **Reservation of rights unless compensation received.**

And with respect to the construction of works for the accommodation of lands adjoining the waterworks, be it enacted as follows :

**16.** Where by the special Act the undertakers shall be required to erect any works for making good the interruption **Differences as to the construction**

**Sect. 16.**

of accommodation works to be settled by justices.

caused to any lands adjoining or near the waterworks, or otherwise for the accommodation of such lands, then if any difference shall arise respecting the construction of any such accommodation works, or the kind or size or sufficiency thereof, or respecting the maintenance thereof, the same shall be determined in England or Ireland by two justices, and in Scotland by the sheriff, and such justices or sheriff shall also appoint the time within which such accommodation works shall be begun and finished by the undertakers.

As to accommodation works generally, see the Railways Clauses Consolidation Act, 1845, ss. 68—75, and the notes thereto, *ante*, pp. 320—326. From the cases there cited it will be seen that lands may be taken compulsorily for accommodation works, as they are part of the works authorised to be executed.

If undertakers fail to execute such works, persons aggrieved may perform the same and charge the expense to the undertakers.

**17.** If the undertakers shall for fourteen days next after the time appointed by such justices or sheriff for the beginning of any such accommodation works fail to begin such works, or, having begun such works, fail diligently to execute the same in a sufficient manner, the person aggrieved by such failure may execute such works or repairs; and the reasonable expenses thereof shall, on demand, be repaid by the undertakers to the person by whom the same shall so have been executed; and if there be any dispute about the amount or nature of such expenses, the same shall be settled in England or Ireland by two justices, and in Scotland by the sheriff.

And with respect to mines, be it enacted as follows:

This heading covers ss. 18—27. These sections have been incorporated into the Public Health Act, 1875, for support of sewers, etc., by the Public Health Act, 1883 (46 & 47 Vict. c. 127), *post*.

Undertakers not entitled to mines unless expressly purchased.

**18.** The undertakers shall not be entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the waterworks, unless the same shall have been expressly purchased, and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

This section is practically identical with s. 77 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 328. Sections 77—85 of that Act deal with the law in respect to mines under railways. The cases in relation to compensation for mines are collected in the notes thereto. See also s. 6 of this Act, *ante*, p. 349. Sections 18—25 of this Act are in many respects identical with the sections of that Act. The material differences are indicated in the notes hereto.

**19.** The undertakers shall from time to time, within six months from the time at which any pipes, conduits, or underground works shall have been laid down or formed by them, cause a survey and map to be made of the district within which any such pipes or underground works shall be laid, on a scale not less than one foot to a mile, and shall cause to be marked thereon the course and situation of all existing pipes or conduits for the collection, passage, or distribution of water and underground works belonging to them, in order to show all such underground works within the said district, and shall, within six months from the making of any alterations or additions, cause the said map to be from time to time corrected, and such additions made thereto as may show the line and situation of all such pipes, conduits, and underground works as may be laid down or formed by them from time to time after the passing of the special Act; and such map and plan, or a copy thereof, with the date expressed thereon of the last time when the same shall have been so corrected as aforesaid, shall be kept in the office of the undertakers, and shall be open to the inspection of all persons interested in the same within the said district.

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Map and plan of underground works of undertakers to be made.

**20.** The undertakers shall from time to time, within three months from the time at which any such map or plan, or any such correction thereof or addition thereto, shall have been made as aforesaid, deposit with the clerks of the peace in England or Ireland, and with the sheriff clerks in Scotland, of every county, and the town clerk of every burgh in Scotland, in which such district or any part thereof may be situate, and also with the parish clerks of the several parishes in England, and clerks of the union of the several parishes in Ireland, and the schoolmaster of the several parishes in Scotland, in which such underground works shall be situate, copies of the said map or plan, with all such particulars and all such corrections and additions as aforesaid, so far as relates to such counties, burghs, and parishes respectively.

Copies of such map or plan to be deposited with clerk of the peace, etc.

**21.** The said clerks of the peace, sheriff clerks, and town clerks, parish clerks, clerks of the union, and schoolmasters, shall receive the said copies of the said map and plan respectively, and shall keep the same, and shall allow all persons interested to inspect the same, and take copies or extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of maps and plans deposited under an Act passed in the first year of the reign of her Majesty,

Clerks of the peace, etc., to receive and keep copies of the map, etc., and allow inspection.

**Sect. 21.**

7 Will. 4 &  
1 Vict. c. 83.

intituled an Act to compel clerks of the peace for counties, and other persons, to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament.

In the revised edition of the statutes the words following "deposited under" to the end, are omitted, and instead are inserted "the Parliamentary Documents Deposit Act, 1837," which is the short title of the Act here mentioned.

For "clerks of the peace" read "clerks to the county council," and for "parish clerk" read "clerk to the parish council in parishes where they have such a council."

There are no provisions corresponding to these last three sections in the "mine" sections of the Railways Clauses Act, 1845.

Mines lying near the works not to be worked until owners give notice to undertakers.

**22.** Except where otherwise provided for by agreement between the undertakers and other parties, if the owner, lessee, or occupier of any mines or minerals lying under the reservoirs or buildings belonging to the undertakers, or under any of their pipes or works which shall be under ground and shall be described in the map or plan which shall be so kept and deposited as hereinbefore mentioned, or within the prescribed distance, if any, and if no distance be prescribed within forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give the undertakers notice in writing of his intention so to do thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the undertakers to cause such mines to be inspected by any person appointed by them for the purpose, and if it appear to the undertakers that the working of such mines or minerals is likely to damage the said works, and if they be willing to make compensation for such mines to such owner, lessee, or occupier thereof, then he shall not work the same; and if the undertakers and such owner do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation.

This section is practically the same as s. 78 of the Railways Clauses Consolidation Act, 1845. See the cases collected in the notes thereto, *ante*, pp. 331 *et seq.* It differs, however, in this, that as regards pipes and other works which are under ground, the owners are not bound to give notice, and will not be liable for any injury caused to them by the usual working of the mine unless the undertakers have deposited the plans of these underground works as provided by ss. 19 and 20 (*South Staffordshire Waterworks v. Mason* (1886), 56 L. J. Q. B. 255).

The date when the notice is given fixes the date when the value of the minerals is to be ascertained, and every fact then in existence is to be taken into account, but an arbitrator, in assessing the amount of compensation, may take into consideration an unexpected and unforeseen rise in the value of coal which has occurred between the date of the company's notice and the award (*In re Brillfa and Merthyr Dare Steam Collieries* (1891), *Limited*, and *Pontypridd Waterworks Co.*, House of Lords, August 6, 1903, reversing [1902] 2 K. B. 135).

If a notice is delivered by promoters under this section, they must

proceed under it to have the compensation assessed (*Clippens Oil Co. v. Edinburgh and District Water Trustees* (1901), 3 F. 1113; affirmed House of Lords, [1902] W. N. 157). **Sect. 22.**  
**NOTE.**

**23.** If before the expiration of such thirty days the undertakers do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines, and to drain the same, by means of engines or otherwise, as if this Act and the special Act had not been passed, so that no wilful damage be done to the said works, and so that the said mines be not worked in an unusual manner; and if any damage or obstruction be occasioned to the works of the undertakers by the working of such mines in an unusual manner the same shall be forthwith repaired or removed (as the case may require), and such damage made good by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith done, or if the undertakers shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the undertakers to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby, by action in any of the superior courts.

If undertakers do not state their willingness to treat for compensation, owner may work the mines.

Owners to make good damage occasioned by working the mines in an unusual manner.

This section is in effect the same as s. 79 of the Railway Clauses Consolidation Act, 1845, *ante*, p. 333. See notes thereto.

**24.** If the working of any such mines under the said works of the undertakers or within the above-mentioned distance therefrom be prevented as aforesaid by reason of apprehended injury to such works, it shall be lawful for the respective owners, lessees, and occupiers of such mines to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata the working whereof shall be so prevented as may be requisite to enable them to ventilate, drain, and work any mines or minerals on each or either side thereof, but no such airway, headway, gateway, or water level shall be of greater dimensions or sections than the prescribed dimensions or sections, and where no dimensions are prescribed eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the said works so as to injure the same.

Mining communications.

This section is practically identical with s. 80 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 336. See notes thereto.

**25.** Except where otherwise provided for by agreement, the undertakers shall from time to time pay to the owner, lessee, or occupier of any mines of coal, ironstone, and other minerals extending so as to lie on both sides of any reservoirs, buildings, pipes, conduits, or other works, all such additional expenses

Company to make compensation to owner, lessee, or occupier of mines for expenses

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incurred by  
reason of  
mines being  
worked.

Disputes to  
be settled by  
arbitration.

and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands over such mines or minerals by such reservoirs or other works, or of the continuous working of such mines or minerals being interrupted as aforesaid, or by reason of the same being worked under the restrictions contained in this or the special Act, and for any mines or minerals not purchased by the undertakers which cannot be obtained by reason of making and maintaining the said works, or by reason of such apprehended injury from the working thereof as aforesaid; and if any dispute or question shall arise between the undertakers and such owner, lessee, or occupier as aforesaid touching the price of such minerals (*a*), the same shall be settled by arbitration in such manner as is provided by the Lands Clauses Consolidation Act, if the undertaking shall be situate in England or Ireland, and by the Lands Clauses Consolidation (Scotland) Act, if the undertaking shall be situate in Scotland.

(*a*) Some of the later editions of the statutes print this word "materials."

"**By reason of such apprehended injury.**"—This section is similar to s. 81 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 337, but differs from it in two respects. It differs: (1) That s. 25 includes not only "minerals which cannot be obtained by reason of making and maintaining the works," but also those which cannot be obtained "by reason of apprehended injury from the working thereof." And see s. 27, *post*. (2) By this section the compensation is to be settled in the manner provided by the Lands Clauses Act, while in s. 81 it is to be settled by arbitration in the manner provided by the Railways Clauses Acts. As to what the mine-owner can recover, see the notes to s. 81, *ante*, p. 338.

"*Such apprehended injury*" is injury apprehended to the works of the undertakers, "apprehended" being used in the sense not merely of being alarmed, but anticipated, so that the undertakers have in consequence stopped the works under s. 22 (*Holliday v. Mayor of Wakefield*, [1891] A. C. 81). When that case was before the Court of Appeal (1888), 20 Q. B. D. 699, FRY, L.J., analysed this section (p. 717), which analysis was approved by the House of Lords. He pointed out that "there is one set of persons who are to pay, namely, the undertakers, and one payee, the owner, lessee, or occupier of mines extending so as to lie upon both sides of any reservoir, buildings, pipes, conduits, or other works. There are five matters in respect of which payments are to be made: first, the severance of lands over the mines—that is, of surface lands; secondly, the interruption of the continuous working of the mine—that is, the interruption which arises from the taking of a portion of the minerals which but for that the owner would have worked; thirdly, the restrictions on working, such as those in s. 23 on working in anything but the usual manner; fourthly, and here there is no new sentence—the value of mines and minerals not purchased by the undertakers, but which cannot be got by reason of the works; and, fifthly, the apprehended injury from the working as aforesaid—that is, the injury referred to in ss. 22 and 24 as apprehended by the undertakers. It seems to me to follow that an injury which a mine-owner apprehends, and which the undertakers do not, is nowhere provided for." It follows, therefore, that the mine-owner has no title to claim or recover compensation for the prospective prevention of the working of part of the mineral. See note to s. 27, *post*.

**26.** For better ascertaining whether any such mines are being worked or have been worked so as to damage the said works, it shall be lawful for the undertakers, after giving twenty-four hours' notice in writing, to enter upon any lands through or near which the said works are situate, and wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith, and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the said works to the parts of such mines which are being worked or about to be worked.

**Sect. 26.**

Power to company to enter and inspect the working of mines after giving notice of the same.

This section corresponds with s. 83 of the Railways Clauses Consolidation Act, *ante*, p. 339.

**27.** Nothing in this or the special Act shall prevent the undertakers from being liable to any action or other legal proceeding to which they would have been liable for any damage or injury done or occasioned to any mines by means or in consequence of the waterworks, in case the same had not been constructed or maintained by virtue of this Act or the special Act.

Nothing to prevent undertakers from being liable to actions for injury done to mines.

There is no section similar to this in the Railways Clauses Act; it was obviously intended by the legislature to afford the mine-owner protection against a reservoir or other waterwork—a protection not required in the case of a railway line. To do this it has departed from two principles which have been laid down in respect of compensation with reference to public works of a different nature, such as railways. These principles are: first, that the works when so established should not be subject to be impeached in a court of law for any damage or annoyance they might cause by reason of their ordinary use; and, secondly, that any person whose land would be injuriously affected by the construction of the works should, in lieu of his right of action, be entitled to compensation, a compensation which must, except where otherwise specially provided, be assessed once and for ever, and not subject to increase or diminution after that one assessment. Under this section compensation in the form of damages may still be claimed against a waterworks company, notwithstanding that they were constructed and maintained by virtue of an Act of Parliament, and compensation as such may be made from time to time and not be assessed once and for all (*per* HALSBURY, L.C., in *Holliday v. Mayor of Wakefield*, [1891] A. C. 81, pp. 89, 90). In that case Lord WATSON stated his opinion as regards the effect of this section. He did not think that s. 27 was meant to supersede the other clauses of the Act in cases where a full remedy is provided by these clauses; but that it was intended, and was sufficient, to cover every case of injury to mineral workings in which the mine-owner would otherwise have been deprived of a legal remedy. There is no cause of action under this section until there is actual injury, and "injury is done to the mine by the reservoir whenever, in due course of working, the minerals, or part of them, become either unworkable to profit, or altogether unworkable, by reason of the flooding which must accompany the working." Whenever that state of matters occurs, the mine-owner may bring his

**Sect. 27.** action for removal of the nuisance, with the alternative of pecuniary damages, if the undertakers prefer not to remove it (*S. C.*, p. 101).

**NOTE.**

By the Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), ss. 3—10, provision is made by which persons interested may complain to two justices that a reservoir is in a dangerous state, whereupon an inquiry shall be made, and if it prove to be dangerous, they may make an immediate order for repair.

For a case where a mine was flooded owing to the overflow of a canal caused by *vis major*, and the mine-owners were held not to be entitled to recover any damages or compensation, see *Thomas v. Birmingham Canal Co.* (1879), 49 L. J. Q. B. 851, following the principle in *Nichols v. Marsland* (1876), 2 Ex. D. 1, and for a case of compensation given by the express provisions of the special Act, see *Countess of Rothes v. Kirkcaldy Waterworks Commissioners* (1882), 7 App. Cas. 694.

And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows :

This heading includes ss. 28—34.

Power to break up streets, etc., under superintendence, and to open drains, and to lay pipes, etc.

**28.** The undertakers, under such superintendence as is herein after specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special Act, and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place within the same limits pipes, conduits, service pipes, and other works and engines, and from time to time repair, alter, or remove the same, and for the purposes aforesaid remove and use all earth and materials in and under such streets and bridges, and do all other acts which the undertakers shall from time to time deem necessary for supplying water to the inhabitants of the district included within the said limits, doing as little damage as can be in the execution of the powers hereby or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers.

Undertakers not to enter on private land without consent.

**29.** Provided always, that nothing herein contained shall authorise or empower the undertakers to lay down or place any pipe, conduit, service pipe, or other work in any land not dedicated to public use, without the consent of the owners and occupiers thereof, except that the undertakers at any time may enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act, or any other Act of Parliament, and may repair or alter any pipe so laid down.

The subsoil in the streets belongs usually to the adjoining owner, who, but for this section, would be entitled to restrain the undertakers from laying their pipes, notwithstanding the consent of the local authority (*Goodson v. Richardson* (1874), 9 Ch. App. 221). It would therefore be the owner who

would be entitled to compensation for the removal of materials, etc. A local authority have power to lay mains under a private road under s. 54 of the Public Health Act, 1875, notwithstanding the above section, and compensation is payable under s. 308 of that Act (*Hill v. Wallasey Local Board*, [1894] 1 Ch. 133).

Sect. 29.

NOTE.

A water company in laying its pipes is not entitled under these sections to cut through the abutments of a bridge carrying a road over a railway, and to suspend water mains from the girders of the bridge without coming to an agreement with the owner of the bridge (*Lord Provost of Glasgow v. Glasgow and South Western Rail. Co.*, [1895] A. C. 376). Similarly these sections do not entitle them to break open the brickwork or roof of a railway tunnel in order to place pipes. "Tunnels" in the text means tunnels similar to drains and sewers, and in any event the right to interfere with sewers, etc., does not authorise the permanent displacement or removal thereof (*Caledonian Rail. Co. v. Glasgow Corporation* (1901), 3 Ct. of Sess. Cas. (5th ser.) 526).

Sections 30—34 deal with the superintendence of the highway authority.

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And with respect to access to the special Act, be it enacted as follows :

90. The undertakers shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them, and shall also within the space of such six months deposit in the office of the clerk of the peace in England or Ireland, and of the sheriff clerk in Scotland, of the county in which the undertaking is situated, a copy of such special Act, so printed as aforesaid; and the said clerk of the peace and sheriff clerk shall receive, and they and the undertakers respectively shall keep, the said copies of the special Act, and shall allow all persons interested therein to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of her Majesty, intituled an Act to compel clerks of the peace for counties, and other persons, to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament.

Copies of special Act to be kept by undertakers in their office, and deposited with the clerks of the peace, etc., and be open to inspection.

7 Will. 4 &  
1 Vict. c. 83.

(a) The Parliamentary Documents Deposit Act, 1837.

91. If the undertakers fail to keep or deposit any of the said copies of the special Act, as hereinbefore mentioned, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Penalty on undertakers failing to keep or deposit such copies.

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## THE HARBOURS, DOCKS, AND PIERS CLAUSES ACT, 1847.

(10 & 11 VICT. c. 27.)

*An Act for consolidating in one Act certain provisions usually contained in Acts authorising the making and improving of harbours, docks, and piers.*  
[11th May 1847.]

[Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorising the construction or improving of harbours, docks, and piers, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that] (a) this Act shall extend only to such harbours, docks, or piers as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act shall apply to the undertaking authorised thereby, so far as they are applicable to such undertaking, and shall, with the clauses of every other Act incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Extent  
of Act.

(a) The preamble has been repealed by the Statute Law Revision Act, 1891, but is printed here as stating briefly and clearly the purpose of this Act. See note to preamble of the Lands Clauses Consolidation Act, *ante*, p. 1. This Act extends to Scotland.

By the General Pier and Harbour Act, 1861 (24 & 25 Vict. c. 45), and the General Pier and Harbour Act, 1861, Amendment Act, 1862 (25 & 26 Vict. c. 19), the Board of Trade may grant provisional orders enabling undertakers to make and construct piers and harbours. Such provisional orders shall be deemed to incorporate this Act, and may incorporate the sections of the Lands Clauses Consolidation Act, 1845, except those relating to the purchase of land otherwise than by agreement. The term special Act shall be deemed to apply to such provisional order (24 & 25 Vict. c. 45, s. 15, and 25 & 26 Vict. c. 19, s. 19).

The parts of the Act here set out are those dealing with the construction of the works in so far as it may be necessary to purchase or take land.

The Act may be incorporated in other Acts by reference to the headings to the groups of sections in the same way as the Lands Clauses Consolidation Act, 1845, s. 5, and see note, *ante*, p. 9.

And with respect to the construction of the harbour, dock, or pier, be it enacted as follows : **Sect. 6.**

Under this heading are ss. 6—13.

**6.** Where by the special Act the undertakers shall be empowered, for the purpose of constructing the harbour, dock, or pier, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the powers so given to them, be subject, if the harbour, dock, or pier be situate in England or Ireland, to the provisions and restrictions contained in this Act and in the Lands Clauses Consolidation Act, 1845, and, if the harbour, dock, or pier be situated in Scotland, to the provisions and restrictions contained in this and in the Lands Clauses Consolidation (Scotland) Act, 1845 ; and the undertakers shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purpose of this or the special Act, or injuriously affected by the construction of the works thereby authorised, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties by reason of the exercise as regards such lands of the powers vested in the undertakers by this or the special Act, or any Act incorporated therewith ; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands Clauses Consolidation Acts for determining questions of compensation with regard to lands purchased or taken under the provisions thereof ; and all the provisions of the last-mentioned Acts shall be applicable to determining the amount of any such compensation, and to enforcing the payment or other satisfaction thereof.

Construction of harbour, dock or pier to be subject to the provisions of this Act and one of the Lands Clauses Consolidation Acts.

“ *The special Act* ” in this Act shall be construed to mean any Act which shall hereafter be passed authorising the construction or improving of any harbour, dock, or pier, and with which this Act shall be incorporated (s. 2).

“ *The undertakers* ” shall mean the persons by the special Act authorised to construct the harbour, dock, or pier, or otherwise carry into effect the purposes of the special Act with reference thereto (s. 2).

“ *The harbour dock or pier* ” shall mean the harbour, dock, or pier, and the works connected therewith by the special Act authorised to be constructed (s. 2). These words will include the quays, wharfs, and warehouses which are constructed under the powers of the special Act (*London Association of Shipowners v. London and India Docks Committee*, [1892] 3 Ch. 242, p. 249).

“ *The lands* ” shall mean the lands which shall by the special Act be authorised to be taken and used for the purposes thereof (s. 2), and “ shall include messuages, lands, tenements, and hereditaments, or heritages of any tenure ” (s. 3), and see note “ *Lands* ” to s. 3 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 5.

**Sect. 6.****NOTE.**

**Full compensation.**—This section is similar in effect to s. 6 of the Railways Clauses Consolidation Act, 1845. See the notes thereto, *ante*, p. 282.

The principles of compensation will be found in the notes to s. 63 of the Lands Clauses Consolidation Act, 1845, in respect of lands taken, *ante*, p. 96, and to s. 68 in respect of lands injuriously affected, *ante*, p. 110.

If power is given to a corporation to do work on a river so as to insure a passage for ships, upon compensating the owners of the soil for injury done by such works, such power does not thereby confer the conservancy of the river on the corporation and prevent a riparian owner erecting a pier (*Corporation of Exeter v. Earl of Devon* (1870), L. R. 10 Eq. 232).

As to blocking up a public right of way to the seashore by erection of a pier, see *Corporation of Yarmouth v. Simmons* (1878), 10 Ch. D. 518.

Where under an old statute power was given to certain persons to render a river navigable and to remove impediments, and to make use of such lands as might be necessary for the purpose, doing as little damage as possible, and making compensation, and the statute appointed a special tribunal to settle the compensation, it was held where a person's land was damaged by the exercise of the powers, and the special tribunal had ceased to exist, that he might recover the damages by action (*Bentley v. Manchester, Sheffield and Lincolnshire Rail. Co.*, [1891] 3 Ch. 222).

Errors and omissions in plans, etc., may be corrected by justices, etc., who shall certify the same.

**7.** If any omission, misstatement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described on the plans or books of reference relating to the harbour, dock, or pier deposited in compliance with the standing orders of either House of Parliament or in the schedule to the special Act, the undertakers, after giving ten days' notice to the owners, lessees, and occupiers of the lands affected by such proposed correction, may apply in England or Ireland to two justices, and in Scotland to the sheriff, for the correction thereof; and if it appear to such justices or sheriff that such omission, misstatement, or wrong description arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission, misstatement, or wrong description; and such certificate shall, along with the other documents to which it relates, be deposited in England and Ireland with the clerk of the peace of the several counties in which the lands affected by such alteration are situate, and in Scotland with the sheriff clerk of such counties, and with the schoolmasters of the several parishes in which such lands are situate, and with the town clerk, if such lands be situate in a royal burgh; and thereupon such plan, book of reference, or schedule shall be deemed to be corrected according to such certificate; and the undertakers may make the works in accordance with such certificate, as if such omission, misstatement, or wrong description had not been made.

Certificate, etc., to be deposited.

*Cf.* the similar proviso in s. 7 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 284, and as to the purchase of interests in land which have by mistake been omitted to be purchased before possession taken, see s. 124 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 250.

**8.** The undertakers shall not commence the execution of the harbour, dock, or pier unless they shall have previously deposited with the said clerks of the peace in England and Ireland, and with the sheriff clerk in Scotland, of every county in which the harbour, dock, or pier is situate, a plan and section of all such alterations from the original plan and section as shall have been approved of by Parliament, on the same scale and containing the same particulars as the original plan and section, and shall also have deposited with the parish clerks of the several parishes in England, and the clerks of the unions of the parishes in Ireland, and the schoolmasters of the several parishes and the town clerk of any royal burgh in Scotland in which such alterations shall have been authorised to be made, copies or extracts of or from such plans and sections as shall relate to such parishes and royal burghs respectively.

**Sect. 8.**

Works not to be proceeded with until plans of all alterations authorised by Parliament have been deposited.

**9.** The said clerks of the peace, sheriff clerks, parish clerks, clerks of unions, schoolmasters, and town clerks shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and shall retain the same, as well as the said original plans and sections, and shall permit all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of the original plans and sections by an Act passed in the first year of the reign of her present Majesty, intituled an Act to compel clerks of the peace for counties, and other persons, to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament (a).

Clerks of the peace, etc., to receive plans of alterations, and allow inspection.

(a) The Parliamentary Documents Deposit Act, 1837 (7 Will. 4 & 1 Vict. c. 83).

For "clerks of the peace" read "clerks of the county council," and for "parish clerk" read "clerk of the parish council, in parishes having such councils."

**10.** True copies of the said plans and books of reference, or of any alteration or correction thereof or extract therefrom, certified by any such clerk of the peace or sheriff clerk, which certificate such clerk shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Copies of plans, etc., to be evidence.

**11.** The undertakers, in making the harbour, dock, or pier, shall not deviate from the line of the works laid down in the said plans

No deviation beyond the limits defined upon plans.

**Sect. 11.**

more than the prescribed number of yards, and where no number of yards is prescribed not more than ten yards, nor in any case to any greater extent than the line of lateral deviation described in the said plans with respect to such harbour, dock, or pier, nor take or use for the purpose of such deviation the lands of any person not mentioned in the books of reference, without his previous consent in writing, unless the name of such person have been omitted by mistake, and the fact that such omission proceeded from mistake have been certified in manner hereinbefore provided.

This section is similar to s. 11 of the Waterworks Clauses Act, 1847. See note thereto, *ante*, p. 356.

Works on the shore of the sea, etc., not to be constructed without the authority of the Commissioners of Woods, etc., and of the Admiralty.

**12.** The undertakers shall not construct the harbour, dock, or pier, or any part thereof, or any works connected therewith, on any part of the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where and so far up the same as the tide flows and reflows, without the previous consent of her Majesty, to be signified in writing under the hands of two of the Commissioners of Woods, and of the Admiralty (*a*), to be signified in writing under the hand of the Secretary of the Admiralty, and then only according to such plan and under such restrictions and regulations as the said Commissioners of Woods and the Admiralty (*a*) approve of, such approval being signified as last aforesaid; and where any such work shall have been constructed with such consent as aforesaid, the undertakers shall not at any time alter or extend the same, without obtaining previously to making any such alteration or extension, the like consents or approvals; and if any such work shall be commenced or completed without such consent and approval, the said Commissioners of Woods, or the Admiralty (*a*), may abate and remove the same, and restore the site thereof to its former condition, at the cost of the undertakers, and the amount of such costs shall be a debt due to the Crown, and recoverable against the undertakers accordingly: Provided always, that if the conservancy of the navigable river shall legally belong to any person, the like consent and approval of such person shall also be necessary, in addition to the consents and approvals hereinbefore required; and if the right of property of or in the shore shall legally belong to any person, such right shall not be prejudiced, except so far as power to purchase the same shall be given by the special Act.

(*a*) The powers and duties of the Admiralty under this section were transferred to the Board of Trade by the Harbours Transfer Act, 1862 (25 & 26 Vict. c. 69), s. 5.

**13.** If the undertakers propose to make any deviations from or alterations in the plans of their works deposited as aforesaid, they shall, before adopting and carrying such deviations or alterations into execution, submit the plans thereof to the Admiralty (a), and also to the said Commissioners of Woods ; and no deviations from or alterations in the deposited plans shall be adopted by the undertakers unless approved by the Admiralty or the said commissioners respectively, signified in manner aforesaid, or otherwise as they shall think proper.

Sect. 13.

Before alterations in plans are executed, to be approved of by the Admiralty and the Commissioners of Woods, etc.

(a) Now the Board of Trade (25 & 26 Vict. c. 69), s. 5.

And with respect to the construction of works for the accommodation of the officers of customs, be it enacted as follows :

This heading includes ss. 14 and 15.

**14.** The undertakers, before they shall be entitled to take any rates in respect of the harbour, dock, or pier, if required so to do by the Commissioners of her Majesty's customs, or at any time thereafter when so required, shall erect on a suitable spot within or near the harbour, dock, or pier, to be approved of by the said commissioners, and always thereafter maintain, a watch-house and boat-house for the use of the tide surveyors of the customs and their crew, of such size and materials and in such manner as shall be approved of by the said commissioners, and shall also, to the satisfaction of the said commissioners, provide from time to time a sufficient number of huts for the use of the officers of revenue, with all fit and necessary weighing materials ; and shall at all times keep such watch-house, boat-house, huts, and weighing materials in good and sufficient repair.

Undertakers to erect watch-house and boat-house for custom house officers, and keep the same in repair.

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And with respect to the construction of warehouses, wharfs, and other conveniences, be it enacted as follows :

This heading includes ss. 20—24.

**20.** The undertakers, in addition to the lands authorised to be compulsorily taken by them under the powers of the special Act, may contract with any party willing to sell the same for the purchase of any lands adjoining or near to the undertaking for extraordinary purposes ; (that is to say,)

Power to purchase additional land required for extraordinary purposes.

For making and providing additional yards, wharfs, and places for receiving, depositing, and loading or unloading goods, and for the erection of weighing machines, toll houses, offices, warehouses, sheds, and other buildings and conveniences :

**Sect. 20.**

For making convenient roads to the harbour, dock, or pier, or any other purpose which may be requisite or convenient for the formation or use thereof.

Power to construct warehouses and other works, and provide cranes, etc.

**21.** The undertakers may, as well upon the said lands as upon any other lands acquired by them under the provisions of this and the special Act, construct such warehouses, storehouses, sheds, and other buildings and works as they may deem necessary for the accommodation of goods shipped or unshipped within the harbour, dock, or pier, and may erect or provide such cranes, weighing and other machines, conveniences, weights, and measures as they think necessary for loading, unloading, measuring, and weighing such goods.

In the case of *London Association of Shipowners v. London and India Docks Joint Committee*, [1892] 3 Ch. 242, it was held that these warehouses and wharfs were also part of the works authorised to be constructed by the special Act, and it was stated that where the legislature has expressly conferred upon a company powers, which the company as owner of property could have exercised without express statutory authority, that these powers must be treated as inserted in order to define, that is, limit the right conferred, and as implying a prohibition against the exercise of the more extensive rights which the company might have by virtue of its ownership of property. See *per* LINDLEY, L.J., p. 251.

*Cf.* this section with s. 45 of the Railways Clauses Consolidation Act, 1845, and see notes thereto, *ante*, p. 307.

\* \* \* \* \*

And with respect to access to the special Act, be it enacted as follows :

Copies of special Act to be kept by the undertakers in their office and deposited with the clerks of the peace, etc., and to be open to inspection.

**97.** The undertakers shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them, and shall also within the space of such six months deposit in the office of the clerk of the peace in England or Ireland, and of the sheriff clerk in Scotland, of the county in which the harbour, dock, or pier, or any part thereof, is situate, a copy of such special Act so printed as aforesaid ; and the said clerk of the peace and sheriff clerk shall receive, and they and the undertakers respectively shall keep, the said copies of the special Act, and shall allow all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of her present

**Majesty**, intituled an Act to compel clerks of the peace for counties, **Sect. 97.**  
**and other persons, to take the custody of such documents as shall** <sup>7 Will. 4 &</sup>  
**be directed to be deposited with them under the standing orders of** <sup>1 Vict. c. 83.</sup>  
**either House of Parliament (a).**

(a) The Parliamentary Documents Deposit Act, 1837.

**98.** If the undertakers fail to keep or deposit, as hereinbefore <sup>Penalty on</sup>  
 mentioned, any of the said copies of the special Act, they shall <sup>undertakers</sup>  
 forfeit twenty pounds for every such offence, and also five pounds <sup>failing to</sup>  
 for every day afterwards during which such copy shall be not so <sup>keep or</sup>  
 kept or deposited. <sup>deposit such</sup>  
 copies.

Similar provisions as to access will be found in the other Clauses Consoli-  
 dation Acts.

THE TOWNS IMPROVEMENT CLAUSES  
ACT, 1847.

(10 & 11 VICT. c. 34.)

*An Act for consolidating in one Act certain provisions usually contained in Acts for paving, draining, cleansing, lighting, and improving Towns.* [21st June 1847.]

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This Act may be incorporated in special Acts in the same manner as in the other consolidating Acts. See s. 5 of the Lands Clauses Consolidation Act, 1845, and notes thereto, *ante*, p. 9.

Most of the powers formerly contained in special Acts incorporating this Act are given to urban sanitary authorities—now urban district councils and borough councils—by the Public Health Act, 1875, *post*, and by s. 160 thereof, certain of the sections of this Act are also incorporated therewith. The sections dealing with compensation are ss. 19—21. These are not incorporated in the Public Health Act, 1875, and compensation for land taken by local authorities is governed usually by ss. 175—178 of that Act.

And with respect to taking lands, and the compensation to be made by the commissioners for damage done by them in execution of the powers of this and the special Act, be it enacted as follows :

This heading includes ss. 19—21.

Taking of  
lands for  
purposes of  
of special  
Act to be  
subject to  
Lands  
Clauses Act.  
8 & 9 Vict.  
c. 18.

19. Where by this or the special Act the commissioners shall be empowered to take or use for the purposes thereof any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the powers so given, be subject to the provisions and restrictions contained in this Act and in the Lands Clauses Consolidation Act, 1845 ; and the commissioners shall make to the owners and occupiers of and all other parties interested in any such lands taken or used for the purposes of this or the special Act, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties, by reason of the exercise, as regards such lands, of the powers vested in the commissioners by this or the special Act, or any Act incorporated therewith ; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the said Lands Clauses Consolidation Act for determining questions

of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the last-mentioned Act shall be applicable to determine the amount of any such compensation, and to enforce the payment or other satisfaction thereof. Sect. 19.

The principles of compensation will be found in the notes to s. 63 of the Lands Clauses Consolidation Act, 1845, for land taken (*ante*, p. 96), and to s. 68 in respect of lands injuriously affected (*ante*, p. 115).

"*The special Act.*"—This expression in this Act means "any Act which shall be hereafter passed for the improvement or regulation of any town or district or of any class of towns or districts defined or comprised therein, and with which this Act shall be incorporated" (s. 2).

"*The commissioners*" mean "the commissioners, trustees, or other persons or body corporate intrusted by the special Act with powers for executing the purposes thereof" (s. 2). The definition of promoters of the undertaking in s. 2 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 3, includes commissioners.

"*Lands.*"—This word "shall include messuages, lands, tenements, and hereditaments of any tenure" (s. 3). And see the same definition in s. 3 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 4, and the note thereto.

20. If any omission, misstatement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, mentioned in any schedule to the special Act, the commissioners, after giving ten days' notice to the owners, lessees, and occupiers of the lands affected by such proposed correction, may apply to two justices for the correction thereof; and if it appear to such justices that such omission, misstatement, or wrong description arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission, misstatement, or wrong description; and such certificate, with the other documents to which it relates, shall be deposited with the clerk of the peace of the county in which the lands affected thereby are situated, and such certificate shall be kept by such clerk of the peace with the other documents to which it relates, and thereupon such schedule shall be deemed to be corrected according to such certificate; and the commissioners may take any lands in accordance with such certificate, as if such omission, misstatement, or wrong description had not been made.

Errors and omissions in schedule to special Act may be corrected by justices, who shall certify the same.

Certificate to be deposited.

See s. 7 of the Railways Clauses Consolidation Act, 1845, which is similar in effect; and see the notes thereto, *ante*, p. 284.

21. The commissioners shall make good all damage to any buildings or land by reason of altering the level of any street, Commissioners to make compensation for

**Sect. 21.** or otherwise carrying into execution any of the powers of this or the special Act, or of any Act incorporated therewith, and shall pay to the owners, lessees, and occupiers of any such buildings or lands respectively such amount of compensation for such injury as shall be agreed upon between such owners, lessees, and occupiers and the commissioners ; and if such owners, lessees, and occupiers and the commissioners cannot agree as to the amount of such compensation, and the proportions thereof to be paid to such owners, lessees, and occupiers respectively, then the amount of such compensation, and also the proportions which the persons claiming the same are entitled to, shall be determined in the manner provided by the Lands Clauses Consolidation Act, 1845, for determining questions of compensation with regard to lands purchased or taken under the provisions thereof ; and all the provisions of the last-mentioned Act shall be applicable to determine the amount of any such compensation, and to enforce payment or other satisfaction thereof.

damage done.  
If parties  
cannot agree  
as to com-  
pensation,  
the same to  
be deter-  
mined in  
manner pro-  
vided by  
8 & 9 Vict.  
c. 18.

As to compensation in respect of altering the level of streets, see the notes to s. 68 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 115, and more particularly the note, "Access to premises," p. 124 ; and see also the notes to s. 308 of the Public Health Act, 1875, *post*.

Commissioners are not authorised by this Act to commit a nuisance as by carrying sewerage into rivers (*Attorney-General v. Leeds Corporation* (1870), L. R. 5 Ch. 583).

Sections 214 and 215 contain provisions as to access to the special Act practically identical with those in the other Clauses Consolidation Acts. See the Waterworks Clauses Act, 1847, ss. 90, 91, *ante*, p. 365.

## THE CEMETERIES CLAUSES ACT, 1847.

(10 &amp; 11 VICT. c. 65.)

*An Act for consolidating in one Act certain provisions usually contained in Acts authorising the making of Cemeteries.*

[9th July 1847.]

[Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorising the making of cemeteries, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for insuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that] this Act shall extend only to such cemeteries as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted in any such Act, shall apply to the cemetery authorised thereby, so far as they are applicable to such cemetery, and shall, with the clauses of every other Act incorporated therewith, form part of such Act, and be construed therewith as forming one Act. Extent of Act.

This Act is intended to be incorporated in Acts obtained by companies or individuals for the purpose of providing a cemetery. It is incorporated in the Public Health (Interments) Act, 1879, an amending Act of the Public Health Act, 1875, which enables a local authority to acquire, construct, and maintain a cemetery either wholly or partly within or without their district (ss. 2, 3).

The Burial Acts, 1852—1900, were intended to provide for the closing of overfilled churchyards and burial grounds, and to establish burial boards both in urban and rural districts, for the purpose of providing and managing new burial grounds. See Little's "Law of Burial," 3rd edition, p. 60. The powers of burial boards in rural parishes are now transferred by the Local Government Act, 1894 (56 & 57 Vict. c. 73), to parish councils, and in urban districts they may be transferred to the district council. Burial boards had no power to take land compulsorily, but by s. 9 of the Local Government Act, 1894, parish councils may apply to the county council to take land for any of the purposes of that Act if they cannot acquire it by agreement on reasonable terms. See Local Government Act, 1894, *post*.

The taking of land under the Cemeteries Clauses Act or the Public Health (Interments) Act, 1879, is quite independent of the powers given by the Burial Acts.

\* \* \* \* \*

**Sect. 6.** And with respect to the making of the cemetery, be it enacted as follows:

Sections 6—17.

Construction of cemetery to be subject to the provisions of this and the Lands Clauses Consolidation Act, 1845.

**6.** Where by the special Act the company shall be empowered for the purpose of making the cemetery, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act and the Lands Clauses Consolidation Act, 1845, and shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the special Act, or injuriously affected by the construction of the works thereby authorised, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, or other parties, by reason of the exercise, as regards such lands, of the powers vested in the company by this or the special Act, or any Act incorporated therewith; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the Lands Clauses Consolidation Act, 1845, for determining questions of compensation with regards to lands purchased or taken under the provisions thereof, and all the provisions of the last-mentioned Act shall be applicable to determine the amount of such compensation, and to enforce payment or other satisfaction thereof.

As to the principles of compensation, see the notes to ss. 63 and 68 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 96, 115.

"*The special Act*" in this Act means "any Act which shall be hereafter passed authorising the making of a cemetery, and with which this Act shall be incorporated" (s. 2).

"*The company*" means "the persons by the special Act authorised to construct the cemetery" (s. 2).

"*The lands*" means "the lands which shall by the special Act be authorised to be taken or used for the purposes thereof," and "shall include messuages, lands, and hereditaments of any tenure" (ss. 2, 3).

"*The cemetery*" means "the cemetery or burial ground and the works connected therewith, by the special Act authorised to be constructed."

Errors and omissions in Act or schedule to be corrected by justices, who shall certify the same.

**7.** If any omission, misstatement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described in the special Act or the schedule thereto, the company, after given ten days' notice to the owners of the lands affected by such proposed correction, may apply to two justices for the correction thereof; and if it appear to such justices

that such omission, misstatement, or wrong description arose from mistake, they shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, misstatement, or wrong description ; and such certificate shall be deposited with the clerk of the peace of the county in which the lands affected thereby shall be situated, and thereupon the special Act or schedule shall be deemed to be corrected according to such certificate, and the company may take the lands according to such certificate, as if such omission, misstatement, or wrong description had not been made.

**Sect. 7.**

Certificate to be deposited.

*Cf.* the similar provision in s. 7 of the Railways Clauses Consolidation Act, 1845, and see the notes thereto, *ante*, p. 284.

8. Copies of any alteration or correction of the special Act, or the schedule thereto, or of any extract therefrom, certified by any such clerk of the peace in whose custody such alteration or correction may be, which certificate such clerk of the peace shall give all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Copies of plans, etc., to be evidence.

9. The company shall not sell or dispose of any land which shall have been consecrated or used for the burial of the dead, or make use of such land for any purpose except such as shall be authorised by this or the special Act, or any Act incorporated therewith.

Company not to dispose of any land consecrated or used for burials.

By s. 40 of this Act, the company may sell part of the cemetery for vaults and burials.

By the Burial Act, 1857, s. 24, trustees of closed cemeteries vested in them under a local Act or otherwise, are empowered, with the sanction of the Secretary of State, to let or sell unconsecrated land and buildings which have not received interments when the cemetery is closed by Order in Council.

The ordinary has jurisdiction to grant a faculty authorising a portion of a consecrated cemetery or churchyard closed for burials by Order in Council to be used for widening a public street (*In re Bideford Parish, Ex parte Rector of Bideford*, [1900] P. 314).

10. No part of the cemetery shall be constructed nearer to any dwelling-house than the prescribed distance, or if no distance be prescribed, two hundred yards, except with the consent in writing of the owner, lessee, and occupier of such house.

Cemetery not to be within a certain distance of houses.

"Dwelling-house" in this case means the house itself and does not include the curtilage, and the distance is to be measured from the walls of the dwelling-house. See *Wright v. Wallasey Local Board* (1883), 18 Q. B. D. 783, a case under the Burial Act, 1855 (18 & 19 Vict. c. 128).

**Sect. 11.**

Company  
may build  
chapels, etc.

**11.** The company, upon any land which by the special Act they are authorised to use for the purposes of the cemetery, may build such chapels for the performance of the burial service as they think fit, and may lay out and embellish the grounds of the cemetery as they think fit.

See also s. 2 of the Burial Act, 1900 (63 & 64 Vict. c. 15). As to the powers of burial boards and local authorities to erect crematoria, see Cremation Act, 1902 (2 Edw. 7, c. 8).

Company  
may make or  
widen roads  
to cemetery.

**12.** The company, upon any land purchased by them under this or the special Act, or any Act incorporated therewith, may make any new roads to the cemetery, or widen or improve any existing roads thereto which they think fit.

No road to  
be widened  
without  
consent.

**13.** Provided always, that the company shall not widen or improve any existing road without the consent of the owner thereof, if the road be private, or, if the road be public, without the consent of the persons in whom the management of the road is vested by law.

Owners, etc.,  
may enter  
into agree-  
ments for  
improving  
roads for that  
purpose.

**14.** The company and the owners or persons having the management of any such road as aforesaid may enter into such agreements as they think fit, for enabling the company to widen or improve any such road, and for maintaining the same.

Cemetery to  
be inclosed  
and fenced.

**15.** Every part of the cemetery shall be inclosed by walls or other sufficient fences of the prescribed materials and dimensions, and if no materials or dimensions be prescribed, by substantial walls or iron railings of the height of eight feet at least.

This section does not now apply to a burial ground provided under the Public Health (Interments) Act, 1879. See 63 & 64 Vict. c. 15, s. 10.

Cemetery,  
etc., to be  
kept in  
repair.

**16.** The company shall keep the cemetery and the buildings and fences thereof in complete repair, and in good order and condition, out of the moneys to be received by them by virtue of this and the special Act.

Company  
to make  
compensa-  
tion for  
damage done.

**17.** Provided always, that in the exercise of the powers by this and the special Act granted to the company they shall do as little damage as can be, and shall make full compensation to all parties

interested for all damage sustained by them through the exercise of such powers. **Sect. 17.**

*Cf.* this with the proviso in s. 16 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 290, and see note thereto.

And with respect to preventing nuisance from the cemetery, be it enacted as follows :

18. The company shall make all necessary and proper sewers and drains in and about the cemetery, for draining and keeping the same dry, and they may from time to time, as occasion requires, cause any such sewer or drain to open into any existing sewer, with the consent in writing of the persons having the management of such sewer, and with the consent in writing of the persons having the management of the street or road, and of the owners and occupiers of the lands through which such opening is made, doing as little damage as possible to the road or ground wherein such sewer or drain may be made, and restoring it to the same or as good condition as it was in before being disturbed.

Power to make sewers, drains, etc., in and about the cemetery.

Sections 66 and 67 contain provisions as to access to the special Act similar to those in the other Clauses Consolidation Acts. See the Waterworks Clauses Act, 1847, ss. 90, 91, *ante*, p. 365.

THE ABANDONMENT OF RAILWAYS  
ACT, 1850.

(13 & 14 VICT. c. 83.)

*An Act to facilitate the abandonment of railways, and the dissolution of railway companies, in certain cases.*

[14th August 1850.]

\* \* \* \* \*

Abandonment of railway to be advertised, and demands on the company for compensation to be sent in.

17. [*And be it enacted, that*] (a) within one month after the day on which any such warrant as aforesaid is granted by the said commissioners, the railway company to which the same applies shall cause notice thereof to be inserted in the London, Edinburgh, or Dublin Gazette, according as the railway or part of railway mentioned therein is situate in England, Scotland, or Ireland, and once in each of three successive weeks in some newspaper published or circulating in each county in which any part of such abandoned railway is situate, and to be affixed for three successive Sundays on the principal outer door of the church or churches of every parish in which any part of such railway is situate, and in Ireland such notice shall also be affixed to the Roman Catholic Chapel, and where there shall be no such church or chapel, on some public or conspicuous place of such parish; and every such notice shall require all persons having any claims or demands upon the said company for compensation or otherwise, by reason of the abandonment of railway authorised by such warrant, to transmit the statement of such claims or demands to the secretary of such company, at the office or usual place of business of the same company, within four months from the date of such warrant.

(a) These words and the similar words in italics throughout this statute were repealed by the Statute Law Revision Act, 1891.

**"Any such warrant."**—That is the warrant which the Railway Commissioners under s. 15 are empowered to give authorising the abandonment of the railway. The powers and duties of the Railway Commissioners were transferred to the Board of Trade by 14 & 15 Vict. c. 64.

The power of the Board of Trade as to granting a warrant ordering a railway company to be wound up appears to be limited to railway companies incorporated prior to 1867. This Act applied only to railway companies authorised by Act of Parliament theretofore passed. The Railway Companies Act, 1867, provided that the Act of 1850 should "extend and apply to all companies authorised to make railways by Act of Parliament passed

before the present session." The Abandonment of Railways Act, 1869 (32 & 33 Vict. c. 114), s. 4, allowed railway companies to be wound up under the Companies Acts, 1862—1867, after the warrant had been granted. The Companies Act, 1862, expressly excepts railway companies from its provisions (s. 199). There would appear, therefore, to be no general statute dealing with the winding-up of railway companies incorporated since 1867, and the Board of Trade decided that they would not grant any warrant for the abandonment of a railway formed after 1867. See *In re Uzbridge and Rickmansworth Rail. Co.* (1890), 43 Ch. D. 536, p. 557; and see *In re Enniskillen and Bundoran Rail. Co.* (1890), 25 L. R. Ir. 472.

For the cases as to compensation on the abandonment of a railway, see the notes to the Parliamentary Documents Deposit Act, 1892, *post*.

**"To the secretary."**—By s. 9 of the Abandonment of Railways Act, 1869 (32 & 33 Vict. c. 114), it is provided that where there is no secretary of the company, or no office of the company, the notice given in pursuance of this section may require claims and demands to be sent to such person or to such place as the Board of Trade direct.

18. [*And be it enacted, that*] upon proof to the satisfaction of Commissioners of railways to certify the due publication of the notice of the warrant. the said commissioners that notice of such warrant has been duly published in manner hereinbefore required, the said commissioners shall certify the same accordingly; and such certificate shall be received in all courts of justice or elsewhere as evidence that such notice was duly published as aforesaid.

19. [*And be it enacted, that*] after the granting of any such warrant, and the publication of such notice thereof as aforesaid, the company shall (subject to the provisions hereinafter contained) be released from all liability to make, maintain, or work the railway mentioned in such warrant, or the part thereof thereby authorised to be abandoned, or to purchase any of the lands required for the making thereof, or to complete the purchase of any such lands for the purchase of which notice may have been given, or any contract entered into, by or on behalf of the company, or to complete any contract for or concerning the making, maintaining, or working of the railway so to be abandoned, or any other contract relating to the railway or part of railway so authorised to be abandoned, which by reason of such abandonment cannot be performed: Provided always, that nothing in this Act contained shall extend to release the company from any liability to complete the purchase of any land for the purchase of which any contract may have been entered into by or on behalf of the company, and which contract may have been in part performed, or by virtue or in pursuance of which a specified sum or price as the consideration for the purchase of lands thereby agreed to be sold to or taken by the company shall have been fixed or ascertained previously to the passing of this Act, notwithstanding the

Sect. 17.

NOTE.

After the granting of warrant the company to be released from liability to make the railway.

**Sect. 19.**

time for the completion of the purchase named in such contract shall have been subsequently extended by agreement or arrangement with the company.

Compensation to be made where contracts have been entered into or notice given.

**20.** Provided always, [*and be it enacted,*] that in every case in which before the granting of any such warrant any notice hath been given or contract entered into by or on behalf of the company named therein for purchasing any lands which such company were by the Acts relating thereto empowered to purchase for the purpose of constructing the railway or portion of railway so authorised to be abandoned, and from which contract such company would be relieved under the provisions hereinbefore contained, or where any contract hath been entered into for or concerning the constructing, maintaining, or working of the railway or part of railway so authorised to be abandoned, or any other contract relating thereto, which by reason of such abandonment cannot be performed, the company shall make to the owners or occupiers of and other parties interested in such lands, or being parties to such contracts as aforesaid, compensation, to be determined by arbitration as hereinafter mentioned, for all injury or damage, if any, sustained by such owners, occupiers, and other parties, by reason of such purchase not being completed pursuant to such notice, or by reason of such contract not being performed.

The cases as to the persons entitled to claim compensation upon the abandonment of a railway have been decided upon the words of the special Act authorising the abandonment, and in reference to the distribution of the parliamentary deposit. They will be found in the notes to the Parliamentary Documents Deposit Act, 1892 (55 & 56 Vict. c. 27), *post*.

Compensation to adjoining landowners in lieu of accommodation works.

**21.** [*And be it enacted, that*] where any railway or part of a railway so authorised to be abandoned shall have been then made or commenced, such company shall make to the owners and occupiers of the lands adjoining the railway or part of a railway so commenced or made, and authorised to be abandoned, compensation, to be determined by arbitration as hereinafter mentioned, for all such injury or damage, if any, as shall be sustained by such owners or occupiers by reason of the omission to make gates, passages, drains, watercourses, bridges, and such other works for the accommodation of lands adjoining the railway as such company would have been required to make if such railway had not been allowed to be abandoned.

Where any road has been carried

**22.** [*And be it enacted, that*] where the line of any railway so authorised to be abandoned shall have been wholly or partially laid

out, and any road shall have been carried across such line of railway by means of a bridge or tunnel over or under such railway, which bridge or tunnel the company to whom such railway belonged would, in case the same had not been abandoned, have been liable to keep in repair, then in every such case, except where such bridge or tunnel shall, with the permission of the said commissioners, be by such company removed, and such road restored to the like or an equally convenient and good state as the same was in before it was interfered with by the makers of such railway, to the satisfaction (in case of difference between such company and the owner or persons having the management of such road) of the Commissioners of Railways, such company shall pay to the owner of such road, if it be a private road, or to the trustees, surveyors of highways, or other persons having the management of such road, if it be a turnpike or other public road, a sum of money, to be determined by arbitration as after mentioned, in lieu and discharge of their liability to keep such bridge or tunnel, and also the roadway over the same, in repair.

Sect. 22.

across an abandoned line of railway by means of a bridge or tunnel, the company shall pay a sum in discharge of their liability to keep the bridge, etc., in repair, except where the road is restored to its former state.

23. [*And be it enacted, that*] every sum to be paid as last aforesaid to such trustees, surveyors, or other persons as aforesaid shall be by them forthwith paid over to the treasurer of the county where the bridge or tunnel in respect of which such sum was paid is situate, and shall be by him invested in consolidated bank annuities or other public securities, and the dividends or income thereof shall, until Parliament shall otherwise provide, be applied in the maintenance of the bridge or tunnel in respect whereof the same was paid, in such manner as the justices in quarter sessions having jurisdiction where such bridge or tunnel is situate shall order.

Compensation to trustees and overseers of public roads, how to be applied.

25. [*And be it enacted, that*] the amount of compensation so to be made in the several cases aforesaid shall be determined, in case of difference, by arbitration, in the manner provided by the Railways Clauses Consolidation Act, 1845, or the Railways Clauses Consolidation (Scotland) Act, 1845, as the case may require, and for that purpose all the clauses of the said Railways Clauses Consolidation Acts with respect to the settlement of disputes by arbitration shall be deemed to be incorporated with this Act: Provided always, that no such railway company shall be liable to make any compensation in respect of damage alleged to have been sustained by reason of the abandonment of the railway or part of the railway, or the non-completion of any contract of

Amount of compensation to be settled by arbitration, pursuant to 8 & 9 Vict. c. 20, and 8 & 9 Vict. c. 33.

Claims for compensation to be made within six months after publication

## THE INCLOSURE ACT, 1852.

(15 & 16 VICT. c. 79.)

*An Act to amend and further extend the Acts for the inclosure, exchange, and improvement of land.* [30th June 1852.]

\* \* \* \* \*

Application  
of compensa-  
tion for com-  
mon rights  
paid under  
the Lands  
Clauses  
Consolidation  
Act, 1845,  
etc.

**22.** Where any money shall have been or may hereafter be paid to a committee under the Lands Clauses Consolidation Act, 1845, or under any railway or other special Act by which money may have been directed or authorised to be paid to a committee, as compensation for the extinction of commonable or other rights, or for lands being common lands or in the nature thereof, the right to the soil of which may have belonged to the commoners, and such committee shall be of opinion that the provisions of such Act for the apportionment thereof cannot be satisfactorily carried into effect, such committee may make application in writing to the commissioners to call a meeting of the persons interested in such compensation money for the appointment of trustees of such compensation money, and for the investment thereof, and for the application of the interest and annual produce thereof to such purposes for the benefit of the persons interested therein as the commissioners shall approve; and if the said commissioners shall think fit to proceed with such application, they shall call a meeting accordingly, and the decision of the majority in number and the majority in respect of interest of the persons present at such meeting shall bind the minority and all absent parties: Provided always, that if no instructions shall be resolved upon, or in case the commissioners shall deem such instructions unjust or unreasonable, they may, by an order under their seal, give such instructions for the investment of such compensation money and for the application of the income thereof as they shall think fit; and such order under the seal of the commissioners, or the order approving of such instructions as aforesaid, shall contain provisions for the appointment of new trustees from time to time; and copies of such order shall be deposited and kept in like manner as copies of an award are by the Inclosure Act, 1845 (a), directed to be deposited and kept; and the said committee shall be absolutely

discharged from all liability in respect of such compensation money upon payment thereof to the said trustees, who shall, out of such money, in the first place pay and discharge all expenses which may be incurred by the said commissioners in respect of or in any way incident to such application and order, and apply or invest the surplus thereof in such manner as shall by such order be authorised or directed.

(a) 8 & 9 Vict. c. 118.

The provisions of the Lands Clauses Consolidation Act, 1845, as to commons, will be found in ss. 99—107, *ante*, pp. 232—237 *et seq.* The committee of the commoners are, by s. 104, empowered to apportion the compensation, but as this duty has not been satisfactorily or easily performed, various other methods of dealing with the money have been provided by the Inclosure Act, 1854, *post*, p. 396, and the Commonable Rights Compensation Act, 1882, *post*.

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## THE CUSTOMS CONSOLIDATION ACT, 1853.

(16 &amp; 17 VICT. c. 107.)

*An Act to amend and consolidate the laws relating to the Customs of the United Kingdom and of the Isle of Man, and certain laws relating to Trade and Navigation and the British Possessions.*

[20th August 1853.]

\* \* \* \*

The greater portion of this Act was repealed by the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36) ; but the clauses dealing with the acquisition and disposal of lands for the service of the customs (ss. 332—345) were left intact, and are still operative, with the exception of ss. 334 and 342, which dealt with the application of moneys for the sale and purchase of lands, and for which, as regards lands taken for the customs, ss. 275 and 276 of that Act were substituted. See note to Customs Building Act, 1879, *post*, where these sections are set out.

By ss. 332 and 333, the lands purchased or to be taken for the use of her Majesty's customs were vested in the secretary of customs and his successors, with power to sell and convey the same. By the Customs Building Act, 1879 (42 & 43 Vict. c. 36), *post*, these lands were vested in the Commissioners of Works. By s. 5 thereof, the commissioners are empowered to purchase land, and the clauses of the Lands Clauses Acts are incorporated, except those in respect of the purchase of land otherwise than by agreement, the special Act being the Customs Building Act, 1879, and the promoters of the undertaking being the Commissioners of Works.

By s. 6, however, of that Act, the Commissioners of Works are given the powers and provisions of ss. 335—341 and 345 of the Customs Consolidation Act, 1853, which are here set out, and of ss. 275 and 276 of the Customs Consolidation Act, 1876, which are also set out, *post*.

The Coast-Guard Service Act, 1856 (19 & 20 Vict. c. 83), ss. 4 and 5, *post*, gives power to the Admiralty to take lands for coast-guard stations, and that Act incorporates ss. 336—345 of the Customs Consolidation Act, 1853.

As to the acquisition and disposal of lands, etc., for the service of the Customs :

This heading covers ss. 332—344. As to ss. 332—334, see note, *supra*.

Treasury may  
authorise  
persons to  
mark out  
lands for  
watch-houses,  
etc. ; and to  
treat with  
owners.

**335.** The Treasury may, from time to time, by any writing, authorise any person to survey and make out any lands, not exceeding one-half acre at any one station, which may be wanted for the purpose of erecting watch-houses, dwelling-houses, and other buildings requisite for the security and protection of the revenues of customs and excise, with all necessary ways unto and from the same, such lands being situated within half a mile of the

sea-shore or of the tideway of any navigable river, and may authorise **Sect. 335.**  
 any person by warrant to treat and agree with the owner or owners  
 of or any person or persons interested in any such lands as afore-  
 said for such estate or interest therein, or for the absolute purchase  
 thereof, or for the possession thereof for such term of years as  
 the public service may require.

**336.** When parties being seised, possessed of, or entitled to **Parties seised**  
 any such lands, or any estate or interest therein, labour under any **or entitled to**  
 disability to sell, release, convey, or assign the same, or to contract **lands under**  
 for the grant of any lease of such lands, either for any term of years **disability**  
 or for such periods as the public service shall require, the seventh **empowered**  
 section of the Lands Clauses Consolidation Act, 1845 (England), **to sell or**  
 and the seventh section of the Lands Clauses Consolidation Act, **convey to**  
 1845 (Scotland), shall apply to the cases of the parties so disabled **Treasury or**  
 or incapacitated, in whatever part of the United Kingdom the said **customs.**  
 lands may be situate; and the said sections are hereby respec-  
 tively made a part of and incorporated with this Act, and shall be  
 applicable to parties so seised or entitled as aforesaid in any part  
 of the United Kingdom; and for the purpose of this Act the  
 expression "the promoters of the undertaking," wherever used in  
 the said clauses of the Lands Clauses Acts, shall mean the person  
 authorised as aforesaid by the Treasury.

**337.** In case any bodies or other persons authorised by the **Bodies or**  
 clauses of the Acts lastly hereinbefore mentioned to sell or demise **persons**  
 lands so marked out as aforesaid shall for the space of fourteen **refusing to**  
 days (next after notice in writing, subscribed by such person **treat, or to**  
 authorised as aforesaid shall have been given to the principal **accept con-**  
 officer or officers of any such body, or to such other persons hereby **sideration**  
 authorised to contract on behalf of others or interested themselves **offered,**  
 as aforesaid, or left at his or their usual place of abode, if any such **justices and**  
 can after diligent inquiry be found, and in case any such parties **others may**  
 shall be absent from the United Kingdom, or cannot be found **put her**  
 after diligent inquiry, left with the occupier of such land, or, if **Majesty's**  
 there be no such occupier, shall be affixed upon some conspicuous **officers in**  
 part of such lands), refuse to treat or agree, or by reason of absence **possession.**  
 shall be prevented from treating or agreeing with such person  
 authorised as aforesaid, or shall refuse to accept such annual rent  
 or sum as shall be offered for the hire thereof, either for a time  
 certain or for such period as the public service may require,  
 then and in such case, or in case of disagreement between such  
 bodies or persons so authorised to sell, release, grant, or demise,

**Sect. 377.**

Justices and  
others may  
have a jury  
summoned.

and the person so authorised as aforesaid by the Treasury, and in case also it shall not be practicable to procure by voluntary bargain or sale any other land situate and required as aforesaid, then and in such case it shall be lawful for two or more justices to put the officers of customs in possession of such lands, and for that purpose to issue a warrant under their hands and seals requiring possession to be delivered to such of the said officers as shall be named therein ; and such person so authorised as aforesaid may issue his warrant to the sheriff or sheriffs of the county, riding, stewartry, city, or place wherein such lands shall be situate, to summon a jury ; and every such sheriff, upon receipt of such warrant, shall, in the manner required by law, summon a jury of twenty-four common jurymen to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than twenty miles distant from the lands in question, unless by consent of the parties interested ; and he shall forthwith give notice to the Commissioners of Customs of the time and place so appointed by him : Provided always, that nothing herein shall be construed to extend to any garden or pleasure ground, or to any land immediately contiguous to and used as the curtilage or homestead of any dwelling-house.

As to the mode of proceeding on the inquiry by the jury or juries so summoned as aforesaid :

Incorporation  
of Lands  
Clauses  
Consolidation  
Act (Eng-  
land and  
Ireland).

**338.** Where the lands the subject of inquiry shall be situate either in England or Ireland, the Lands Clauses Consolidation Act, 1845, from section forty to section sixty-eight inclusively, shall be incorporated with this Act ; and for the purpose of this Act the expression “ the promoters of the undertaking,” wherever used in the said Lands Clauses Consolidation Act, shall mean the person authorised as aforesaid by the Commissioners of the Treasury.

Incorporation  
of Lands  
Clauses  
Consolidation  
Act (Scot-  
land).

**339.** Where the lands the subject of inquiry shall be situate in Scotland, the Lands Clauses Consolidation Act, 1845 (Scotland), from thirty-eight to sixty-eight inclusively, shall be incorporated with this Act ; and for the purpose of this Act the expression “ the promoters of this undertaking,” wherever used in the Lands Clauses Consolidation Act, Scotland, shall mean the persons so authorised as aforesaid by the Treasury.

**340.** The jury impanelled as aforesaid shall ascertain the compensation to be paid for any such lands, and the proportion to be paid out of such compensation to any lessees or tenants at will, or otherwise, of such lands; and the proportion so to be paid shall be returned on the verdict. **Sect. 340.**  
Compensation of lessees.

**341.** In all cases where lands shall be taken under the provisions of this Act for a term of years or for such period as the public service shall require, the Treasury, or any other person so authorised as aforesaid, at any time before the possession of lands shall be delivered up to the owner thereof, or other person acting on his behalf, shall remove all such buildings or other erections which may have been erected thereon for the public service, and carry away the materials thereof, making such compensation to the owner or owners of such lands, or other person or persons acting on his behalf, for the damage which may have been done thereto or to the soil thereof by the erection of any such buildings, or removing and carrying away the same, or otherwise, as the Treasury or other person authorised as aforesaid shall think reasonable; and if such owner or owners, or other person acting on his behalf, shall not be willing to accept the compensation so offered, the Treasury or other person so authorised as aforesaid may require two justices of the peace of the county, riding, stewardry, city, or place, to ascertain the compensation which ought to be made for such damage; and such justices shall ascertain the same, and grant a certificate thereof; and the amount of such compensation so ascertained and certified shall forthwith be paid by warrant of the Treasury to the person entitled thereto: Provided, that nothing herein shall be construed to extend to alter, prejudice, or affect any agreement which has or shall be entered into by any such person authorised as aforesaid with any owner of such lands, or other person acting on his behalf, in relation to such buildings or erections. **Upon delivering up lands to the owners all erections for the public service to be removed, making compensation to owners.**  
**In case of dispute compensation to be settled by two justices.**  
**Act not to affect agreements between the Treasury and the owner.**

As to the application of purchase moneys, etc., for lands purchased or taken from parties under disability, etc.

**342.** *[In all cases where any money shall have been or shall be agreed, or shall have been or shall be found by the verdict of any jury to be paid for the use or possession of lands taken by virtue of this Act belonging to any person under any disability or incapacity, or not having the absolute interest therein, the same shall be paid by warrant of the Treasury to the proper officer of the Court of* **Money given for lands belonging to incapacitated persons, etc., to be paid to the proper officer of the Exchequer for their use;**

**Sect. 342.** *Exchequer at Westminster, Edinburgh, or Dublin, respectively, for the time being for receiving the moneys belonging to the suitors of the said Court, for the use of such person, and such officer is hereby authorised and required to receive and give a discharge for such money, and upon receipt thereof to sign a certificate to the Barons of the said Courts of Exchequer respectively, under his hand, signifying that such money was received by him for the use of such person who shall be named in such certificate, and the said certificate shall be filed in the said Court of Exchequer at Westminster, Edinburgh, or Dublin, respectively, as the case may be, and a copy thereof, signed by such officer, shall be read and allowed as evidence for the purposes hereinafter mentioned, and such officer is hereby required, upon receipt of any such sum of money as aforesaid, to pay the same into the Bank of England, or Bank of Scotland, or Royal Bank of Scotland, or Bank of Ireland, as the case may require, and immediately upon the filing of such certificate, the said lands shall be vested in or to the use of her Majesty, her heirs and successors.]*

and upon his certificate of receipt, lands may be vested in her Majesty.

Section 342 is repealed as regards land taken for customs, but its incorporation in the Coast-Guard Service Act does not appear to have been repealed. For the provisions in place thereof in respect of land taken for customs, see the Customs Building Act, 1879, *post*, and the notes thereto.

By the Supreme Court of Judicature (Funds, etc.) Act, 1883 (46 & 47 Vict. c. 29), funds are now payable to the account or credit of the Paymaster-General for and on behalf of the Supreme Court of Judicature.

Barons of Exchequer upon application of parties interested may order disposal of money deposited.

**343.** Upon the application by petition of any party making claim to the money so deposited, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the Barons of the Court of Exchequer at Westminster, Edinburgh, or Dublin may in a summary way, as to them shall seem fit, order such money to be invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective interests of the parties making claim to such moneys or lands or any part thereof, and may make such other order in the premises at the court shall deem fit.

On the death or removal of officers of Exchequer, stocks and securities shall vest in his successor.

**344.** Upon the death, removal, or resignation of any such officer of the said Courts of Exchequer, all stocks and securities vested in him by virtue of this Act shall vest in the succeeding officer of the Exchequer for the purpose hereinbefore mentioned, without any assignment or transfer; and all moneys paid in the said banks respectively in pursuance of this Act, or remaining in

the hands of any such officer at his death, resignation, or removal, and not vested in the funds or placed out on securities as aforesaid, shall be paid over to the succeeding officer for the like purpose for the time being. Sect. 344.

And as the costs of conveyances or leases of lands under this Act :

**345.** Sections eighty-one, eighty-two, and eighty-three of the Lands Clauses Consolidation Act, 1845 (*a*), shall be and are hereby incorporated with this Act, so far as the same shall relate to the conveyance or demise of lands in England and Ireland ; and sections eighty, eighty-one, and eighty-two of the Lands Clauses Consolidation Act (Scotland), shall be and are hereby incorporated with this Act, so far as the same shall relate to the conveyance or demise of lands in Scotland : the expression of “ the promoters of the undertaking,” wherever used in the said Acts respectively, to mean the persons so authorised as aforesaid by the Treasury.

(a) See, *ante*, pp. 199 *et seq.*

## THE INCLOSURE ACT, 1854.

(17 & 18 VICT. c. 97.)

*An Act to amend and extend the Acts for the inclosure, exchange, and improvement of land.* [10th August 1854.]

Application  
of compensa-  
tion for  
common  
rights paid  
under § &  
9 Vict. c. 18.

15. Where any money shall have been or may hereafter be paid to a committee under the Lands Clauses Consolidation Act, 1845, or under any railway or other special Act by which money may have been directed or authorised to be paid to a committee, as compensation for the extinction of commonable or other rights, or for lands, being common lands or in the nature thereof, the right to the soil of which may have belonged to the commoners, and the majority of such committee shall be of opinion that the provisions of such Act for the apportionment thereof cannot be satisfactorily carried into effect, such majority may make application in writing to the commissioners to call a meeting of the persons interested in such compensation money, to determine whether or not such compensation money shall be apportioned under the provisions of this Act.

See ss. 99—107 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 232 *et seq.* Additional powers were given by the Inclosure Act, 1852, *ante*, p. 388, and another method of distribution and dealing with the compensation has been provided by the Commonable Rights (Compensation) Act, 1882, *post*.

Money to be  
paid into  
Bank of  
England.

16. If the majority in number and interest shall resolve that such compensation money shall be apportioned, the amount of such compensation money shall be forthwith paid into the Bank of England, to the credit of an account to be named by the Inclosure Commissioners for England and Wales (*a*); and the said committee shall be absolutely discharged from all liability in respect of such compensation money, upon payment thereof into the Bank of England as hereinbefore directed.

(*a*) Now the Board of Agriculture (52 & 53 Vict. c. 30).

Interests  
to be ascer-  
tained by  
commis-  
sioners.

17. As soon as the said moneys shall have been paid into the bank as aforesaid, the said Inclosure Commissioners, (*a*) or any assistant commissioner appointed or to be appointed by them for that purpose, shall proceed to ascertain, determine, and award the names of the parties who were entitled to such estates, rights, and interests in the said common and commonable lands, and the amount or value of their respective shares, rights, and interests

Sect. 17.

therein, and the proportionate amount of the price so to be paid as aforesaid for such estates, rights, and interests to which each party so entitled as aforesaid is entitled in respect of his share, right, or interest as aforesaid ; and the award of the commissioners under their common seal, or assistant commissioner in writing under his hand and seal, shall be binding on all parties claiming such estates, rights, and interests as aforesaid ; and for the purpose of ascertaining the rights and interests of such parties as aforesaid it shall be lawful for the said Inclosure Commissioners (a) or assistant commissioner to call such meetings as they or he shall think fit of all persons having or claiming any such rights or interests in the said common and commonable lands as aforesaid, at such time and place as the said commissioners or assistant commissioner shall think fit, so as the same shall be appointed by a public notice thereof in writing, to be affixed at least twelve days before such meeting on the principal outer door of the parish church in which such land or any part is situate, and to be inserted in one of the public newspapers published or generally circulated in the county in which such land is situate, and at such meeting the said commissioners or assistant commissioner do and shall proceed to examine into and ascertain all and every the claims which shall be made or put forward in respect of any such rights or interests as aforesaid, and the relative and proportionate value of the estates, rights, and interests of any person or persons claiming to be entitled thereto, and for that purpose do and may employ any valuer or surveyor, and call for and receive such records, deeds, and writings, and such other proof or evidence, as the said commissioners or assistant commissioner may think fit ; and they and he are and is hereby authorised and required to take the testimony of any witnesses upon oath (which oath they and he are and is respectively hereby empowered to administer), or to take the affirmation of such witnesses in cases where affirmation is allowed by law instead of oath.

(a) Now the Board of Agriculture (52 & 53 Vict. c. 30).

In a case where the plaintiff claimed the whole of the sum paid to the committee as the person solely entitled to the commonable rights, and brought an action to recover the same, it was held that s. 104 of the Lands Clauses Consolidation Act, 1845, and this Act, provided the proper machinery to determine who were the parties entitled, and that if the committee were willing to proceed under these sections the court had no jurisdiction to intervene (*Richards v. De Winton*; *Richards v. Evans*, [1901] 2 Ch. 566). On appeal this case was, by agreement, referred to a person to be named by the parties to hold an inquiry as to the persons entitled to the fund, and the nature of their interests, and the case was ordered to stand over generally ([1902] W. N. 113). The arbitrator found that all the owners of freehold farms in the parish were entitled, and on that finding the appeal was dismissed ([1903] 1 Ch. 507).

**Sect. 18.**

Costs of commissioners to be paid out of the money paid in, and the residue divided among the parties interested.

**18.** All the costs and expenses of the said Inclosure Commissioners (a) and assistant commissioner, and of any valuer or surveyor employed by them or him under the provisions hereinbefore contained, shall in the first place be paid out of such compensation moneys, and the residue of the said moneys shall be paid and divided between and amongst the said several parties to be named in the said award, and in the shares and proportions to be ascertained and set forth in such award.

(a) The Board of Agriculture.

Where parties entitled are entitled for limited interests only, the shares, if exceeding £20, shall be paid to trustees.

**19.** When it shall appear to the commissioners (a) or assistant commissioner that any of the parties entitled to such rights or interests are only entitled thereto for a limited interest, then it shall be lawful for them or him, by their or his award, to direct that the moneys to be paid in respect of such right or interest, where the same shall exceed twenty pounds, shall be paid to the trustees acting under the will, conveyance, or settlement under which such person having such limited interest shall be interested in such rights or interests, and where there are no trustees, then into the hands of trustees to be appointed under the hands and seal of the commissioners, to be held by them on trusts similar to the uses or trusts to which such rights or interests had been immediately before the payment of such moneys into the bank subject to, or as near thereto as the said commissioners or assistant commissioner can ascertain; and the receipts of any trustees to whom any such moneys shall be paid as aforesaid shall be good and sufficient discharges for the same: Provided always, that the payment of all such sums shall from time to time be subject to such rules and regulations, for the purpose of ensuring the payment thereof to the person or persons duly entitled to receive the same, as the said commissioners shall by any order direct.

(a) The Board of Agriculture.

As to sums payable in respect of lands not exceeding £20.

**20.** In all cases where the sum payable by virtue of such award in respect of any estate, right, or interest shall not exceed twenty pounds, and the person entitled to such estate, right, or interest shall be under any disability or incapacity, such sum shall and may be paid to the guardian, committee, or husband of such person; and where any such person shall have a limited interest only in such estate, right, or interest, the whole of such sum shall and may nevertheless be paid to the person having such limited interest, to his or her guardian, committee, or husband, as the case may be.

## THE COAST-GUARD SERVICE ACT, 1856.

(19 &amp; 20 VICT. c. 83.)

*An Act to provide for the better defence of the coasts of the realm, and the more ready manning of the navy; and to transfer to the Admiralty the government of the coast-guard.*

[29th July 1856.]

Besides the powers given by this Act, s. 7 of the Lands Clauses Act, 1860, *post*, enables the Secretary of State for War to use all or any of the powers and provisions of the Lands Clauses Acts for the purchase or acquisition of lands wanted for the service of the Admiralty or War Department, or for the defence of the realm. And see also the Naval Works Act, 1895, s. 2, *post*. The powers given to the Admiralty by this Act do not, however, appear to be affected.

\* \* \* \* \*

4. All lands held for the purposes of the existing coast-guard service under the authority of any Act or otherwise, and all other property whatsoever held, possessed, or used for the like purposes, shall, from and after such day as shall be named by the Treasury as aforesaid, become and be vested in and be the property of the Admiralty, in trust for her Majesty, for the public service; and the Admiralty may from time to time sell, exchange, or otherwise dispose of, to such persons as they shall think fit, any lands which may become vested in them under the authority of this Act, or in the exercise of the powers thereby given; and the moneys payable on or by reason of such sales, exchange, or disposal shall be paid to her Majesty's Paymaster-General for the time being (or to such other person as the said Paymaster-General shall appoint); and the receipt of such Paymaster-General (or other person) endorsed on the conveyance or assignment shall be an effectual discharge.

Lands held for existing coast-guard service to be vested in Admiralty.

*Lands.*—It is provided that lands shall include all lands, tenements, and hereditaments, and every estate, right, title, and interest therein, but the definition will now be that given in the Interpretation Act, 1889, which, unless the contrary intention appears, is the meaning to be given to lands in every Act passed after the year 1850. By that Act it is provided that "the expression 'land' shall include messuages, tenements, and hereditaments, houses, and buildings of any tenure." See note, "Lands," to s. 3 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 5.

**Sect. 5.**

Power to  
Admiralty  
to acquire  
lands for  
coastguard  
stations.

5. The Admiralty may from time to time, by any writing under their hands, authorise any person to survey and mark out any lands, not exceeding three acres at or for any one coast-guard station, which may be wanted for the purposes of the coast-guard service, with all necessary ways unto and from the same, and may authorise any person, by warrant, to treat and agree with the proper parties for the purchase of such lands, or the possession thereof ; and the sections of the Act passed in the seventeenth year of the reign of her present Majesty, chapter one hundred and seven (*a*), numbered respectively from three hundred and thirty-six to three hundred and forty-five (each inclusive), and all sections of other Acts therein mentioned, shall be and are hereby incorporated with this Act ; and whenever in any of the sections of any Act so hereby incorporated the expression “the Treasury,” or the expression “the Commissioners of Customs,” shall occur, each of such expressions shall for the purposes of this Act be deemed and taken to mean the Admiralty ; and whenever in any of such sections the expression “the officers of customs” shall occur, such expression shall for the purposes of this Act be deemed and taken to mean officers of the coast-guard.

(*a*) *Ante*, p. 390. And see note to s. 342, *ante*, p. 394.

## THE LANDS CLAUSES CONSOLIDATION ACTS AMENDMENT ACT, 1860.

(23 & 24 VICT c. 106.)

*An Act to amend the Lands Clauses Consolidation Act, 1845, in regard to sales and compensation for land by way of a rentcharge, annual feu duty or ground annual, and to enable her Majesty's principal Secretary of State for the War Department to avail himself of the powers and provisions contained in the same Acts.* [20th August 1860.]

[Whereas it is expedient to extend the provisions of the Lands Clauses Consolidation Act, 1845, in regard to sales of land, or compensation for damages, in consideration of an annual rentcharge, annual feu duty or ground annual, and to enable her Majesty's principal Secretary of State for the War Department to avail himself of the powers and provisions contained in the same Act for the purchase of lands wanted for the service of the War Department or for the defence of the realm: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:] 8 & 9 Vict.  
c. 18.

Repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

1. [So much of the tenth section of the Lands Clauses Consolidation Act, 1845 (a), as provides that, save in the case of lands of which any person is seised in fee or entitled to dispose absolutely for their own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is hereby repealed.] Part of s. 10  
of recited  
Act repealed.

(a) *Ante*, p. 23.

Repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

2. The power to sell and convey lands in consideration of an annual rentcharge provided by the tenth section of the said Act (a), and the power to recover such rentcharge provided by the eleventh section (b) of the said Act, are hereby extended to all cases of sale and purchase or compensation under the said Act where the parties interested in such sale, or entitled to such compensation, are under any disability or incapacity, and have no power to sell or convey

Sections 10  
and 11 of  
recited Act,  
as to power  
to sell, etc.,  
lands for an  
annual rent-  
charge, and  
to recover,  
extended to

**Sect. 2.** such lands, or to receive such compensation, except under the provisions of the said Act.

all sales, etc.,  
where parties  
are under  
disability.

(a) *Ante*, p. 23.  
(b) *Ante*, p. 24.

Similar  
proviso with  
regard to  
lands sold  
under s. 10  
of 8 & 9 Vict.  
c. 19.

**3.** The power to sell and convey lands in consideration of an annual feu duty or ground annual, under the tenth section of the Lands Clauses Consolidation (Scotland) Act, 1845, and the power to recover such annual feu duty or ground annual, are hereby extended to all cases of sale or purchase or compensation under the said Act, where the parties interested in such sale are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act.

Amount of  
rentcharge  
to be settled  
in manner  
directed in  
the ninth  
section of  
recited Acts.

**4.** In every case of such sale or compensation by any party other than parties seised in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rentcharge, annual feu duty or ground annual, hereinbefore mentioned, shall be settled in the manner directed in the ninth section of each of the said Acts respectively: Provided, that the amount of such annual rentcharge, annual feu duty or ground annual, shall in no case be less than one-fourth part greater than the net annual rent received by the parties beneficially interested in such lands, upon an average of the last seven years; and that a charge of five per cent. on the gross sum estimated or fixed as aforesaid by way of compensation for any damage that may be done to the said lands shall in all such cases be added to and shall form a part of the said rentcharge, annual feu duty or ground annual; and that any fine, foregift, grassum, premium, or other consideration in the nature thereof, shall be paid or taken in respect of the lands so sold or damaged, other than the annual rentcharge, annual feu duty or ground annual, made payable for such lands: Provided also, that such rentcharge shall be and remain upon and for the same uses, trusts, and purposes as those upon which the rents and profits of the land so conveyed stood settled or assured at the time immediately before the conveyance thereof, and shall be a first charge on the tolls and rates, if any, payable under the special Act.

If lands  
purchased  
by way of  
rentcharge,

**5.** In case the promoters of the undertaking shall be empowered by any Act or Acts relating thereto, to be passed after the passing of this Act, to borrow money to an amount not exceeding a pro-

scribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this Act with any person, under the powers of this Act and of either of the Acts hereinbefore mentioned, or of either of the said Acts only, for the purchase of any lands in consideration of the payment of a rentcharge, annual feu duty or ground annual, the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years purchase of any rentcharge, annual feu duty or ground annual, so for the time being payable.

Sect. 5.

borrowing  
powers to be  
reduced pro-  
portionally.

6. *The clauses contained in the Lands Clauses Consolidation Act, 1845, relating to the purchase of lands by agreement, and to agreements for sale and conveyances, sales, and releases of any lands and hereditaments, or any estate or interest therein, by parties under disability, shall extend and be applicable to all purchases of land and hereditaments for public purposes which shall be hereafter made by the council of any city or borough, with the sanction of the [Commissioners of her Majesty's] (a) Treasury, under the powers for that purpose contained in the Municipal Corporation Mortgages, etc. Act, 1860.*

Certain  
clauses in  
8 & 9 Vict.  
c. 18,  
extended to  
purchases of  
land, etc.,  
for public  
purposes.

Repealed except as to Ireland by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 5. It is substantially re-enacted by s. 107 of that Act, the Local Government Board being substituted for the Treasury by 51 & 52 Vict. c. 41, s. 72.

(a) These words in brackets are repealed generally by 55 & 56 Vict. c. 19 (the Statute Law Revision Act, 1892), which also again repeals the whole section as regards England.

7. For the purchase or acquisition of any messuages, lands, tenements, and hereditaments wanted for the service of the Admiralty or of the War Department or for the defence of the realm, it shall be lawful for her Majesty's principal Secretary of State for the War Department for the time being to use all or any of the powers and provisions by the Lands Clauses Consolidation Act, 1845, and by the Lands Clauses Consolidation (Scotland) Act, 1845, given to promoters of the undertaking, as therein mentioned; and for such purposes the said principal secretary shall be deemed and taken to be the promoters of an undertaking within the meaning of the said Act; and all the powers and provisions thereof shall, if used by her Majesty's principal Secretary of State for the War Department, be treated as if they were contained in the fifth and sixth Victoria, chapter ninety-four (a), for the purpose of being used and made available by the principal officers of her Majesty's ordnance, and had been transferred to the said principal Secretary for the time being by the eighteenth and nineteenth

Power to  
Secretary for  
War to use  
powers given  
to promoters  
of under-  
takings by  
8 & 9 Vict.  
c. 18.

**Sect. 7.**

Victoria, chapter one hundred and seventeen (*b*), for the purposes aforesaid : Provided always, that nothing herein contained shall authorise any purchase otherwise than by agreement of any land except according to the provisions of the twenty-third section of the said Act of the fifth and sixth Victoria (*a*), or prejudice or affect the powers and authorities of the said principal Secretary for the time being under the said last-mentioned statutes, or either of them.

(*a*) The Defence Act, 1842.

(*b*) The Ordnance Board Transfer Act, 1855.

The principal powers given to officers of the State to take lands for the purposes of national defence, are as follows :

I. By the Admiralty—

The Admiralty (Signal Stations) Act, 1815 (55 Geo. 3, c. 128). See Appendix.

The Coast-Guard Service Act, 1856 (19 & 20 Vict. c. 83), *ante*, p. 33.

The Admiralty Lands and Works Act, 1864 (27 & 28 Vict. c. 57), *post*.

The Naval Works Act, 1895 (58 & 59 Vict. c. 35), *post*.

II. By the War Office—

The Defence Act, 1842 (5 & 6 Vict. c. 94), and various Acts extending the powers given by that Act. See this Act in the Appendix, and the notes thereto.

The Military Lands Act, 1892 (55 & 56 Vict. c. 43), *post*, as amended by the Military Lands Act, 1900 (63 & 64 Vict. c. 56).

Acts for specific purposes connected with the Admiralty and other offices also incorporate the Lands Clauses Acts, as, for example, the Public Offices Sites Act, 1882 (45 & 46 Vict. c. 32), and the Military Forces Localisation Act, 1872 (35 & 36 Vict. c. 68).

This Act and  
8 & 9 Vict.  
cc. 18 and 19  
to be  
construed  
together.

**8.** This Act shall be read and construed as part of the said Lands Clauses Consolidation Act, 1845, or of the Lands Clauses Consolidation (Scotland) Act, 1845, in all matters in which it relates to the said Acts respectively ; and in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression of "The Lands Clauses Consolidation Acts Amendment Act, 1860."

## THE LAND DRAINAGE ACT, 1861.

(24 & 25 VICT. c. 133.)

*An Act to amend the Law relating to the drainage of land for agricultural purposes.* [6th August 1861.]

WHEREAS it is expedient to amend the law relating to the drainage of land for agricultural purposes: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

It is outside the scope of this Work to deal at any length with the powers of commissioners of sewers and others to make, repair, and improve water-courses and outfalls, to build embankments, and generally to do acts necessary for the prevention of floods. The principal statutes in force authorising such works to be done are :

The Bill of Sewers (23 Hen. 8, c. 5).

The Sewers Act, 1833 (3 & 4 Will. 4, c. 22).

The Sewers Act, 1841 (4 & 5 Vict. c. 45).

The Land Drainage Act, 1847 (10 & 11 Vict. c. 38).

The Land Drainage Act, 1861 (24 & 25 Vict. c. 133).

Powers are given to commissioners of sewers by the Sewers Act, 1833 (ss. 24—40), *post*, to purchase or take land for the purpose of maintaining or improving existing works, and provisions are therein made for the assessment and payment of compensation, but no power is given to purchase or take lands for new works.

As that Act was prior to the Lands Clauses Consolidation Act, 1845, the provisions as to taking land and for ascertaining the compensation are contained in that Act. They are somewhat different from those in the Lands Clauses Acts and will be found in the Appendix. It is the first general Act enabling land to be taken for this purpose.

The Land Drainage Act, 1847, enables owners of land to execute drainage works upon neighbouring land, upon an order of the Board of Agriculture. See note to s. 83, *infra*.

The Land Drainage Act, 1861, appears to contain certain provisions in substitution for the powers contained in these last-mentioned statutes, and its provisions will probably be followed in most cases, but by s. 60, it is expressly provided that all powers given by Part I. of this Act shall be deemed in addition to and not in derogation of any other powers conferred on commissioners of sewers by Act of Parliament, law, or custom; and these other powers may be exercised as if this Act had not passed.

The Public Health Act, 1875, s. 327 (1), provides that nothing in that Act shall authorise any local authority to interfere with any of the works of commissioners of sewers, without their written consent. Section 13, which vests sewers in the local authority, excludes those made by other authorities or by other persons under statutory powers.

**Sect. 1.***Preliminary.*

Short title.

1. This Act may be cited for all purposes as the Land Drainage Act, 1861.

Act to apply to England only.

2. This Act, in so far as the same relates to commissions of sewers, shall include any commission of sewers granted by her Majesty, and for the time being in force, whether such commission is or is not granted in pursuance of this Act, or has or has not been granted previously to this Act, and in so far as the same relates to commissioners of sewers, shall include commissioners acting under any such commission as aforesaid; but it shall not extend to Scotland or Ireland, or to any part of the metropolis, as defined by the Act passed in the session holden in the eighteenth and nineteenth years of the reign of her present Majesty, chapter one hundred and twenty, intituled an Act for the better local management of the metropolis (a).

(a) The Metropolis Management Act, 1855.

Navigable rivers are usually managed by conservators or commissioners under private Acts and are exempted from the jurisdiction of commissioners. Certain local districts are also exempted. See Kennedy and Sanders on Land Drainage, p. 70.

Definition of terms.

3. "Watercourse" shall include all rivers, streams, drains, sewers, and passages through which water flows:

"Person" shall include any body of persons, corporate or unincorporate, unless there is something in the context inconsistent therewith:

"Owner," as used throughout this Act, except where it is otherwise defined in the provisions relating to rating, shall have the same meaning as it has in the Lands Clauses Consolidation Act, 1845 (a).

(a) Section 3, *ante*, p. 4.

**PART I.****COMMISSIONS OF SEWERS.**

\* \* \* \* \*

Sections 4—13 deal with the issue of a commission of sewers and the assignment of new limits of jurisdiction.

Section 14 provides that a commission once issued shall continue until superseded by her Majesty.

Section 15 provides as to a quorum.

**6.** The following persons shall be deemed to be proprietors for the purposes of this Act ; that is to say,

**Sect. 6.**

Definition of proprietors.

(1) Any person entitled for his own benefit, at law or in equity, for an estate in fee, to the possession or receipt of the rents and profits of any freehold or copyhold land, whether such land is or not subject to incumbrances :

(2) Any person absolutely entitled in possession, at law or in equity, for his own benefit, to a beneficial lease of land of which not less than twenty-five years are unexpired, whether such land is or not subject to incumbrances ; but no lease shall be deemed to be a beneficial lease, within the meaning of this Act, if the rent reserved thereon exceeds one-third part of the full annual value of the lands demised by such lease :

(3) Any person entitled under any existing or future settlement, at law or in equity, for his own benefit, and for the term of his own life, or the life of any other person, to the possession or receipt of the rents and profits of land of any tenure, whether subject or not to incumbrances, in which the estate for the time being subject to the trusts of the settlement is an estate for lives or years renewable for ever, or is an estate renewable for a term of not less than sixty years, or is an estate for a term of years of which not less than sixty are unexpired, or is a greater estate than any of the foregoing estates :

(4) The word "settlement," as herein used, shall include any Act of Parliament, will, deed, or other assurance, whereby particular estates or particular interests in land are created, with remainders or interests expectant thereon :

(5) Any body corporate, any corporation sole, any trustees for charities, and any commissioners or trustees for ecclesiastical, collegiate, or other public purposes, entitled at law or in equity, in the case of freehold estates or copyhold estates in fee, and in the case of leasehold estates to a lease for an unexpired term of not less than sixty years.

\* \* \* \* \*

**Sect. 16.**

Declaration  
of powers of  
commis-  
sioners.

*General Power of Commissioners.*

**16.** The powers of commissioners of sewers acting within the jurisdiction shall extend to the following acts :

- (1) To cleansing, repairing, or otherwise maintaining in a state of efficiency any existing watercourse or outfall for water, or any existing wall or other defence against water, hereinafter referred to under the expression "maintenance of existing works" :
- (2) To deepening, widening, straightening, or otherwise improving any existing watercourse or outfall for water, or removing mill dams, weirs, or other obstructions in watercourses or outfalls for water, or raising, widening, or otherwise altering any existing wall or other defence against water, hereinafter referred to under the expression "improvement of existing works" :
- (3) To making any new watercourse or new outfall for water, or erecting any new defence against water, to erecting any machinery or doing any other Act not hereinbefore referred to, required for the drainage, necessary supply of water for cattle, warping, or irrigation of the area comprised within the limits of their jurisdiction, hereinafter referred to under the expression "the construction of new works" :

Provided,

- (1) That no person shall by virtue of this Act be compelled to execute at his own expense any works which he would not have been compelled to execute if this Act had not been passed :
- (2) That no work shall be deemed to be a new work that is a substitution for an old one, in cases where such old work is so much out of repair or so inefficient as to make it expedient to construct a new work in place thereof :
- (3) That full compensation shall be made for all injury sustained by any person by reason of the exercise by the commissioners of the above powers :
- (4) That the exercise of the foregoing powers shall be subject to the restrictions hereinafter mentioned.

Commissioners of sewers are also authorised to purchase and take land for the purpose of improving existing works by the Sewers Act, 1863 (3 & 4 Will. 4, c. 22), ss. 24—26. See Appendix. No power is given by that Act to acquire land for new works. It can only be done compulsorily under this Act after obtaining the sanction of Parliament.

**"Full compensation shall be made."**—For the general principles of compensation, see the notes to ss. 63 and 68 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 96 and 115. In the notes to s. 63 are discussed the principles of compensation when land is taken, and in those to s. 68, the principles when land is injuriously affected.

*Cf.* also s. 16 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 290.

If commissioners acting in excess of their jurisdiction do an act which injures a landowner, he will be entitled to recover damages, although he may in ignorance of the illegality have claimed compensation (*Pentney v. Lynn Paving Commissioners* (1865), 12 L. T. (N.S.) 818).

Where drainage commissioners under a private Act made a sluice, which burst owing to the negligence of their servants and neighbouring land was injured, it was held that the remedy was by an action for damages and that the landowner was not entitled to recover compensation under the Act (*Coe v. Wise* (1866), L. R. 1 Q. B. 711; *Collins v. The Middle Level Commissioners* (1869), L. R. 4 C. P. 279).

As to the liability of commissioners for injury caused by the negligent manner in which the authorised work is carried out, see *Grocers' Co. v. Donne* (1836), 3 Scott, 356; *Clothier v. Webster* (1862), 31 L. J. C. P. 316.

**Sect. 16.****NOTE.**

**17.** The commissioners shall not be entitled to remove or otherwise interfere with any mill dam, weir, or other like obstruction, whereby the level of the water is raised for any milling or other purpose of profit, so as to injuriously affect the supply of water, otherwise than with the consent of the owner of such mill dam, weir, or other like obstruction, until the following things have been done; that is to say,

- (1) Their right to do so has been determined in manner hereinafter mentioned :
- (2) Compensation has been made to all parties entitled for the injury which may be caused by such removal or interference.

**18.** For the purpose of determining the right of the commissioners to remove or otherwise interfere with any such dam, weir, or other like obstruction, there shall be decided, if the owner consent, by two or more justices assembled in petty sessions, but if he do not consent, by arbitration, the questions following; that is to say,

- (1) Whether the proposed removal or interference is necessary for the effectual drainage of land within the jurisdiction of the commissioners :
- (2) Whether the proposed removal or interference will cause any injury to the owner :
- (3) Whether any injury that may be caused by the removal or interference is or is not of a nature to admit of being fully compensated for by money.

Restrictions  
as to obstruc-  
tions.

Questions as  
to right to  
remove any  
obstructions.

**Sect. 19.**

Consequences  
of determi-  
nation of  
question.

**19.** The consequence of any such decision shall be as follows that is to say,

- (1) If the decision is that such removal or interference is necessary for the effectual drainage of the lands by the commissioners, the commissioners shall not be entitled to make the same :
- (2) If the decision is that such removal or interference is necessary for the purpose aforesaid, but that the injury to be caused thereby is not of a nature to be fully compensated for by money, the commissioners shall not be entitled to make the same :
- (3) If the decision is that such removal or interference is necessary, and that any injury that may be caused may be fully compensated by money, the commissioners shall be at liberty to make the same, upon making compensation as hereinafter mentioned.

Amount of  
compensation  
how ascer-  
tained.

8 & 9 Vict.  
c. 18.

**20.** Where the decision is that the commissioners are entitled to remove or interfere with any such mill dam, weir, or obstruction, the commissioners shall take the same steps in respect to compensating the parties interested as are required to be taken by the said Lands Clauses Consolidation Act by purchase in cases where they are authorised to purchase or take land under a special Act.

Where a corporation under a special Act were authorised from time to time, and as they should think proper, to cleanse and otherwise improve a river, and for such a purpose to alter or remove the town mill weir, compensation being made to all persons sustaining damage, but there being no provision as to taking land except by agreement, and the corporation entered upon the weir and removed part and placed a permanent floodgate, it was held that the remedy of the owner was not to bring an action to restrain the corporation from so doing, but to proceed to recover compensation for the injury sustained, as the placing of the floodgate was not a taking of land (*Holt v. Corporation of Rochdale* (1870), L. R. 10 Eq. 33).

Restrictions  
as to pur-  
chase of land.

**21.** The commissioners shall not by virtue of this Act purchase any land for new works, otherwise than by agreement with the owner thereof, until they have obtained the sanction of Parliament in manner hereinafter mentioned.

Publication  
of notices.

**22.** The commissioners, before applying for the sanction of Parliament, shall do as follows ; that is to say,

- (1) Publish once at the least in the London Gazette, and at least in each of three consecutive weeks in some n

paper circulating within the limits of their commission, an advertisement describing shortly the nature of the undertaking in respect of which the land is proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of land that they require :

**Sect. 22.**  
—

- (2) Serve a notice in manner hereinafter mentioned on every owner or reputed owner, lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands ; such notice to be served

By delivery of the same personally on the party required to be served, or, if such party is absent abroad, to his agent ; or

By leaving the same at the usual or last known place of abode of such party as aforesaid ; or

By forwarding the same by post in a prepaid letter, addressed to the usual or last known place of abode of such party.

**23.** Upon compliance with the provisions hereinbefore contained with respect to advertisements and notices, the commissioners may present a petition to the Inclosure Commissioners (a). The petition shall state the land intended to be taken, and the purposes for which it is required. It shall pray that the commissioners may, with reference to such land, be allowed to put in force the powers of the said Lands Clauses Consolidation Act in relation to the compulsory taking of land ; and such prayer shall be supported by such evidence as the Inclosure Commissioners (a) require.

Petition to  
Inclosure  
Commis-  
sioners.

(a) Now the Board of Agriculture (52 & 53 Vict. c. 30).

**24.** Upon the receipt of such petition, and upon proof to their satisfaction of the proper advertisements having been published and notices served, the Inclosure Commissioners shall take such petition into their consideration, and they may either dismiss the same, or they may, if they think fit, send an inspector to the district in which the land is situate, for the purpose of making inquiry as to the propriety of assenting to the prayer of such petition.

Inquiries by  
Inclosure  
Commis-  
sioners.

**Sect. 25.**

Notice of  
inquiries.

**25.** Before commencing his inquiry the inspector shall give such notice as the Inclosure Commissioners direct, of his intention to make the same, and of a time and place at which he will be prepared to hear all persons desirous of being heard before him on the subject-matter of such inquiry.

Provisional  
order by  
Inclosure  
Commis-  
sioners to be  
confirmed by  
Parliament.

**26.** Upon the completion of such inquiry the Inclosure Commissioners may, by provisional order, empower the commissioners to put in force with reference to the land mentioned or referred to in such order the powers of the said Lands Clauses Consolidation Act in relation to the compulsory taking of land ; and it shall be the duty of the Inclosure Commissioners as soon as convenient may be to take all proper steps for the confirmation of such provisional order by Act of Parliament, and when so confirmed shall be deemed to be a public general Act of Parliament, and take effect accordingly ; but previous to such confirmation it shall not be of any validity whatever.

Expenses of  
obtaining  
provisional  
order.

**27.** All costs, charges, and expenses incurred by the Inclosure Commissioners in relation to the obtaining any such Act as aforesaid shall be paid by the commissioners out of the rates leviable on them in pursuance of this Act, and applicable to the works with reference to which the provisional order was obtained.

Provisions of  
8 & 9 Vict.  
c. 18, and  
23 & 24 Vict.  
c. 106,  
incorporated  
with this  
Act.

**28.** Subject to the restrictions herein contained, the commissioners may purchase such lands or easements relating to lands to which they may require for the purposes of this Act ; and the Lands Clauses Consolidation Act, 1845, and the Act amending the said Act, passed in the session of the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter one hundred and six (1860), shall be incorporated with this part of this Act, with the exceptions and subject to the conditions hereinafter contained ; that is to say,

- (1) There shall not be incorporated with this part of this Act the sections and provisions of the Lands Clauses Consolidation Act, 1845, hereinafter mentioned ; that is to say, section sixteen, whereby it is provided that the capital is to be subscribed before the compulsory powers are to be put in force ; section seventeen, whereby it is provided that the certificate of the justices should be evidence that the capital has been subscribed ; the provisions relating to the entry upon lands by the promoters of the undertaking, contained in sections eighty-four, eighty-five, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety, ninety-one, both inclusive ; section one hundred

twenty-three, whereby a limit of time for the compulsory purchase of land is imposed ; the provisions relating to the manner of serving notices ; and the provisions relating to access to the special Act :

**Sect. 23.**

- (2) In the construction of this part of this Act and the said incorporated Acts this part of this Act shall be deemed to be the special Act, and the commissioners shall be deemed to be the promoters of the undertaking ; and the word "land" or "lands" shall include any easement in or out of lands.

(a) The Lands Clauses Consolidation Acts Amendment Act, 1860, *ante*, p. 401.

It should be noted that the word "lands" includes easements, and will enable the commissioners to acquire easements, if necessary ; but it may be doubted whether, in the absence of special provision in the provisional order, that it will enable the commissioners to take possession of a horizontal stratum, for the purpose, for example, of a tunnel. See note "The word 'lands,'" in the notes to s. 3 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 5.

If the commissioners obstruct or destroy an easement over land which they take, the owner of the dominant tenement has no claim for compensation in respect of land taken, but his remedy is for compensation for injuriously affecting his land under s. 68. See notes to s. 18 of the Lands Clauses Consolidation Act, 1845 ; note, "Lands," *ante*, p. 28.

**29.** Previously to commencing any improvements in existing works, or any new works, where such improvements or new works involve an expenditure of more than one thousand pounds, the commissioners shall cause plans of the proposed work and an estimate of the expense thereof, and of the area within which a rate will be required to be levied to meet such expense, to be made, together with a list of the names and addresses of the persons reputed to be proprietors (a) of the land within such last-mentioned area, with the addition of the number of acres of which each person is reputed to be the proprietor, and shall publish their intention to execute such works two months before commencing the same, in manner following ; that is to say,

Notice to be given of certain works.

By inserting in some newspaper circulating within the limits of their commission, once in every week during such period of two months, a notice explaining briefly the nature of the work, the amount of expense to be incurred, and the area of land within which a rate is proposed to be levied for meeting such expense, describing such area by reference to a deposited plan, or by boundaries, or in such other manner as the commissioners may think best calculated to give information of their intention, and stating a place within the limits of their

**Sect. 29.**

commission at which the plan and estimate of the works the list of reputed proprietors may be inspected at all reasonable hours :

By placing a copy of such notice for three successive Sundays on the church door of the principal church or some one of the churches of the parish or parishes in which such works are to be done, or, in the case of any extra parochial place, of some parish immediately adjoining thereto.

(a) See the definition of "Proprietors," in s. 6 of this Act, *supra*, p.

Correction  
of list of  
proprietors.

**30.** Any person interested may at any time before the expiration of such two months as aforesaid apply to the commissioners to correct the list of reputed proprietors by inserting or expunging the name of any person, or by altering the number of acres appropriated by such list to any proprietor ; and the commissioners shall hear any application so made, and shall amend the list accordingly, and the decision of the commissioners in respect of such list shall be final ; and at the expiration of the period of two months, or of such further period as the commissioners may fix for the purpose of hearing any application made within such period of two months, the list as settled by the commissioners shall be conclusive evidence of proprietorship for the purpose of ascertaining the proportion of dissenting proprietors as hereinbefore mentioned.

Dissent of  
proprietors  
of one-half  
of area  
conclusive  
against new  
works.

**31.** If within such period of two months the proprietors of one-half of the area of land within which a rate is according to notice proposed to be levied declare in writing to the commissioners by notice left at their office, that they are unwilling that such work should be executed, the commissioners shall take no further steps therein ; but if no such declaration of dissent is made, the commissioners may at the expiration of such period of two months commence the proposed work, and repay out of the rates so levied by them within the area all expenses incurred, not exceeding the estimate published in the notice.

Provision in  
case of no  
proprietor.

**32.** If the commissioners are unable to discover the proprietors of any lands, they shall give notice to that effect in the list of reputed proprietors made by them ; and such land shall, in the event of no proprietor proving his title to have his name inserted in the list before the period hereinbefore named for the completion of the list, be altogether excluded in any computation that may

made of the proportion borne by the dissenting proprietors of any area of land, as hereinbefore provided, to the aggregate number of the proprietors of such land. **Sect. 32.**

**33.** Commissioners of sewers, acting within their jurisdiction, may, without the presentment of a jury, make any order in respect of the execution of any work, the levying of any rate, or doing any act, which they might but for this section have made with such presentment; subject to this proviso, that any person aggrieved by any such order made by the commissioners without the presentment of a jury may appeal therefrom in manner hereinafter mentioned. Jury may be dispensed with under certain conditions.

Sections 34—37 enable commissioners to commute for such sums of money as they think expedient the obligations of persons who by reason of tenure or otherwise are obliged to maintain walls and sewers and other work within their jurisdiction.

Sections 38—41 deal with rates.

### *Legal Proceedings.*

**42.** Where any notice is required to be given by the commissioners, such notice shall in all cases be sufficiently executed if signed by the clerk to the commissioners; and every notice purporting to be signed by such clerk shall be receivable in evidence before all legal tribunals, and in all legal proceedings, without any other proof. Notices by commissioners, how to be signed.

**43.** All notices served by the commissioners on any proprietor or owner shall, if due service thereof has been made, be binding on all persons claiming by, from, or under such proprietor, or owner, to the same extent as if such notice had been served on such last-mentioned persons respectively. Notices served on proprietors, etc., to be binding on persons claiming under them.

**44.** Except where a special mode of service is provided by this Act, all notices required to be served by the commissioners upon any proprietor or owner of lands shall either be served personally on such parties, or be left at their last usual place of abode, if any such can after diligent inquiry be found; but in case any such parties are absent from the United Kingdom, and their last usual place of abode cannot be found after diligent inquiry, such notices shall be left with the occupier of such lands, or if there be no such occupier, shall be affixed upon some conspicuous part of such lands. Notices on owners to be served personally, or left at their places of abode.

*Cf. ss. 19 and 20 of the Lands Clauses Consolidation Act, 1845, ante, p. 44, and the notes thereto.*

**Sect. 45.**

Notices to  
corporations  
to be left at  
their  
principal  
office.

**45.** If any proprietor or owner on whom notice is to be served is a corporation aggregate, or joint stock or other company, or body of proprietors or undertakers, such notice shall be left at the principal office of such corporation, company, or body, or, if no such office can after diligent inquiry be found, shall be left on some agent, if any, of such corporation, company, or body; and if no such officer or agent can be found, it shall be left with the occupier of the lands, or, if there be no such occupier, shall be affixed on some conspicuous part of such lands.

Service of  
notices on  
occupiers.

**46.** Except where a special mode of service is provided by this Act, all notices required to be served by the commissioners on the occupier of any land shall either be served personally on him, or be left at his last usual place of abode, if any such place of abode can after diligent inquiry be found; and in case he is absent from the United Kingdom, and his last usual place of abode cannot be found, it shall be left with the occupier, or, if there be no such occupier, it shall be affixed on some conspicuous part of such premises.

Appeal to  
quarter  
sessions.

**47.** Where any order, requisition, or rate has been made by the commissioners, or any act done by them, without the consent or agreement of a jury, in pursuance of the powers of this Act, any person aggrieved by such order, requisition, or rate may appeal to the court of quarter sessions against any such order, requisition, or act, and the court may confirm, annul, or modify the same accordingly; but no such appeal shall be entertained unless made within four months next after the making of such order, requisition, or the making such rate, or the doing of such act, unless ten days' notice in writing of such appeal, previously given to the court of quarter sessions, stating the nature and grounds thereof, is served on the commissioners, nor unless the appellant, within four months after the service of such notice, enter into recognizances with two sufficient sureties, before a justice of the peace, conditioned to prosecute such appeal, and to abide the order of the court thereon.

\* \* \* \* \*

*Saving Clauses and Miscellaneous.*

Saving rights  
of canal  
owners and  
wharfingers.

**54.** Nothing in this Act shall authorise the commissioners or any drainage board or owner—

- (1) To interfere with any sewers or other works already made or hereafter made and used for the purpose of drainage.

preserving, irrigating, or improving land under any local or private Act of Parliament, so as to injuriously affect the same ;

**Sect. 54.**

- (2) To interfere with any river, canal, dock, harbour, lock, reservoir, or basin, or the supply of water to any river, canal, dock, harbour, lock, reservoir, or basin, so as to injuriously affect the navigation on such river, canal, dock, harbour, lock, reservoir, or basin, or the use or maintenance thereof, or to interfere with any towing-path so as to interrupt the traffic thereof, in cases where any corporation, company, undertakers, commissioners, conservators, trustees, or individuals are by virtue of any Act of Parliament entitled to navigate on or use such river, canal, dock, harbour, lock, reservoir, or basin, or in respect of the navigation on or use of which river, canal, dock, harbour, lock, reservoir, or basin any corporation, company, undertakers, commissioners, conservators, and trustees, or individuals are entitled by virtue of any Act of Parliament to the receipt of any tolls or other dues ;
- (3) To interfere with the works or supply of water of any body or persons, corporate or unincorporate, supplying water to any town or place, so as to injuriously affect the same ;
- (4) To execute any works in, through, or under any wharves, quays, docks, harbours, or basins, belonging to the proprietor or proprietors of any inland navigation constituted by Act of Parliament, or for the use of which they are entitled by virtue of any Act of Parliament to demand any tolls or dues ;

without the consent of such corporation, company, undertakers, commissioners, conservators, trustees, or individuals as are hereinbefore in that behalf respectively mentioned, such consent to be expressed in writing, in the case of individuals under their hands, in the case of a corporation under their common seal, and in the case of a company, undertakers, commissioners, conservators, or trustees, under the hand of their clerk or other duly authorised officer or agent.

**55.** Nothing in this Act shall authorise the commissioners to divert any river in such manner as to injure or to diminish the supply of water to any harbour, without the consent of the Commissioners not to divert rivers so as to injure harbours.

**Sect. 55.**

servators or other authority having the management of such harbour.

Power for canal commissioners to alter sewers.

**56.** Any corporation, company, undertakers, commissioners, conservators, trustees, or individuals authorised by virtue of any Act of Parliament to navigate on or use any river, canal, dock, harbour, or basin, or to demand any tolls or dues in respect of navigation on such river or canal, or the use of such dock, harbour, or basin, may, at their own expense, and on substituting other sewers, drains, culverts, and pipes equally effectual, and certified in writing by the surveyor of the commissioners or drainage board, to stop up, divert, or alter the level of sewers, drains, culverts, or pipes constructed by the commissioners or drainage board, and pass over or under or interfering with or with the improvement or alteration of such river, canal, dock, harbour, or basin, or the towing-path of such river, canal, dock, harbour, or basin, and do all such matters and things as may be necessary for carrying into effect such stop up, diversion, or alteration.

Exemptions under local Acts preserved.

**57.** Nothing in this Act shall be construed to make liable to the control of the commissioners any river, canal, or inland navigation, or the cuts, reservoirs, feeders, or other works belonging thereto, in cases where such river, canal, or inland navigation is now under the provisions of any local or private Act of Parliament exempt from such control.

\* \* \* \* \*

Part II. comprises ss. 63—71 and deals with elective drainage districts and drainage boards ; of these s. 67 provides as follows :

Powers of drainage boards.

**67.** All powers by this Act or by any other Act of Parliament law, or custom vested in or exerciseable by commissioners of sewers within the limits of their jurisdiction may, upon the constitution of a drainage district, be exercised by the drainage board of such district within its limits ; and all powers hitherto exerciseable by commissioners of sewers within such district shall cease to be subject to this proviso, that any person aggrieved by any order, requisition, or rate made by the drainage board, or any act done by them, may appeal therefrom in the same manner in which it is by this Act authorised to appeal against any order, requisition, or rate made by the commissioners, or any act done by them.

\* \* \* \* \*

## PART III.

## POWER OF PRIVATE OWNERS TO PROCURE OUTFALLS.

**72.** Any person interested in land who is desirous to drain the same, and in order thereto deems it necessary that new drains should be opened through lands belonging to another owner, or that existing drains in land belonging to another owner should be cleansed, widened, straightened, or otherwise improved, may apply to such owner, who is hereinafter referred to as the adjoining owner, for leave to make such drains or improvements in drains through or on the lands of such owner.

Application  
for outfall  
to adjoining  
owner.

**73.** Any such application as aforesaid shall be by notice in writing, under the hand of the applicant, and shall be served on the owner, and also on the occupier, if the owner be not the occupier, in manner in which notices are required to be served on owners and occupiers under the first part of this Act. The notice shall state the nature of such drains or improvements in drains, be accompanied by a map, on which the length, width, and depth of the proposed drains or improvements in drains shall be delineated, and shall further state the compensation, if any, which the applicant proposes to pay.

Mode of  
making  
application.

**74.** The adjoining owner may, by deed under his hand and seal, assent to such application, upon such terms and on payment of such compensation as he may require ; and any assent so given shall be binding on all parties having any estate or interest in the land, subject to the following provisions :

Assent of  
adjoining  
owner.

1stly. That any arrangement entered into by any adjoining owner under any disability or incapacity, or not having power to assent to such application, except under the provisions of this Act, shall not be valid unless the same is approved by two surveyors, one of whom is to be nominated by the applicant, and the other by the adjoining owner ; and each of such surveyors, if they approve of the arrangement, shall annex to the document containing the same a declaration to that effect, subscribed by them :

2ndly. That any compensation to be paid by the applicant to the adjoining owner in cases where such owner is under any disability or incapacity, or has not power to assent to such application, except under the provisions

**Sect. 74.**

of this Act, shall be applied in manner in which the compensation coming to parties having limited interest or prevented from treating, and not making title, applicable, under the Lands Clauses Consolidation Act, 1845.

3rdly. That any occupier or person other than the owner interested in the lands shall be entitled to compensation for any injury he may sustain by the making of the proposed drains or improvements in drains, so that the claim therefor be made within twelve months after the completion of such drains or improvements in drains, the amount of such compensation to be determined, in case of dispute, in the manner in which disputed compensation for land is required to be determined by the Lands Clauses Consolidation Act, 1845.

Record of  
assent of  
adjoining  
owner.

**75.** The applicant shall forward to the clerk of the peace of the county, riding, or division of the county wherein the land situate the deed containing the assent of the adjoining owner to the proposed drains or improvements in drains, who shall keep the same in his office as a record of the proceedings between the parties.

Dissent of  
adjoining  
owner.

**76.** The adjoining owner shall be deemed to have dissented from the application made to him if he fail to express his assent thereto within one month after the service of the notice of application on him; and in the event of such dissent there shall be decided, by two or more justices in petty sessions assembled, unless the adjoining owner require the same within such period of one month to be decided by arbitration, the questions following that is to say,

- (1) Whether the proposed drains or improvements in drains will cause any injury to the adjoining owner, or to the occupier or other person interested in the lands :
- (2) Whether any injury that may be caused is or is not of a nature to admit of being fully compensated for by money :

And the provisions of the first part of this Act relating to the decision of the questions therein mentioned shall apply to the decision of the questions mentioned in this section.

The result of any such decision shall be as follows ; that is **Sect. 76.**  
to say,

Result of  
decision.

(1) If the decision is that no injury will be caused to the adjoining owner, to the occupier, or other parties interested in the lands, the applicant may proceed forthwith to make the proposed drains or improvements in drains :

(2) If the decision is that injury will be caused to the adjoining owner, occupier, or other parties interested in the lands, but that such injury is of a nature to admit of being fully compensated by money, the justices or arbitrators shall proceed to assess such compensation, and to apportion the same amongst the parties in their judgment entitled thereto ; and on payment of the sum so assessed the applicant may proceed to make the proposed drains or improvements in drains :

(3) If the decision is that injury will be caused to the adjoining owner, occupier, or other parties interested in the lands, and that such injury is not of a nature to admit of being fully compensated by money, the applicant shall not be entitled to make the proposed drains or improvements in drains.

**77.** Where the compensation assessed by the justices or arbitrators under the last preceding section is payable to any owner or other person who is under any disability or incapacity, or is not entitled to receive the same for his own benefit, such compensation shall be applied in the manner in which the compensation coming to parties having limited interests or prevented from treating and not making title is applicable under the Lands Clauses Consolidation Act, 1845.

Application  
of compensa-  
tion in case  
of owners  
under  
disability.

**78.** The justices or arbitrators, as the case may be, in the event of their approving of a scheme of drainage as proposed by the applicant or as modified by themselves, shall cause a map thereof to be prepared, and shall certify under their hands the correctness of such map ; and it shall be the duty of the applicant to forward the same to the clerk of the peace of the county, riding, or division of the county wherein the land is situate, who shall keep the same in his office as a record of the proceedings between the parties.

Duty of  
arbitrators.

\* \* \* \* \*

Sections 79—81 deal with the maintenance and cleaning of such drains.

**Sect. 82.**

Costs of  
adjoining  
owner.

Provision  
in case of  
change of  
natural  
outfall.

**82.** All costs, charges, and expenses reasonably incurred by the adjoining owner in respect of any application made in pursuance of this part of this Act shall be defrayed by the applicant.

**83.** Where any person is desirous, in pursuance of this part of this Act, of constructing any drain by means whereof a brook, river, or other natural watercourse will be diverted from its ordinary channel into any other brook, river, or natural watercourse, he shall cause a copy of the notice hereby required to be served on the adjoining owner to be published by advertisement once at least in each of three successive weeks in some local newspaper circulating in the district in which the drain proposed to be constructed is situate, and to be served in manner in which notices are required to be served under the first part of this Act (where no special mode of service is prescribed) on all owners of land abutting upon the brook, river, or other natural watercourse in which the diversion is made, and situate within four miles of the point of junction, and shall deposit a copy of the map herebefore required to accompany the notice served on the adjoining owner with the clerk of the peace of the county, riding, or division of the county wherein the proposed drain is situate; and it shall be lawful for any person being the owner of land capable of being injured by the proposed drain, within eight weeks after the first notice of the proposed drain appears in the newspaper, to serve notice that he apprehends injury from such drain on the person proposing to make the same, and thereupon such owner shall be deemed to have dissented, and shall be entitled to the same rights and privileges under this part of this Act as if he were the adjoining owner.

Powers very similar to those in Part III. of this Act are contained in the Land Drainage Act, 1847 (10 & 11 Vict. c. 38). Owners interested in land desirous of improving and draining it may by that Act apply to the Inclosure Commissioners (now the Board of Agriculture) for power to carry out similar drainage works on the lands of adjoining owners who either dissent or are under disability. The Board of Agriculture may by order authorise the works after inquiry, and the person authorised may enter upon the lands of the neighbouring owners and execute the works, subject to making compensation for any damage occasioned by the exercise of the powers (s. 10). The provisions as to compensation are contained in ss. 9—11, and are as follows:

**THE LAND DRAINAGE ACT, 1847.**

Persons  
authorised  
to execute  
works may  
enter upon  
lands for that  
purpose.

**9.** It shall be lawful for the person or persons authorised as aforesaid to enter into and upon any land in the order of the commissioners, or the plan thereunto annexed, described or shown, and in conformity with the terms of such order, but not otherwise, to widen, straighten, deep

divert, scour or cleanse any river, stream, ditch, or drain, brook, pool, or watercourse, and to make, open, and cut any new watercourse, side cut, ditch, or drain, and to alter or remove any bank, sluice, floodgate, clough, hatch, weir, dam, or other obstruction, and to make or erect any bank, sluice, floodgate, hatch, ditch, drain, tunnel, or other works necessary or convenient for drainage or for warping, and to dam, bar, and stop up with any weir or dam any river or watercourse, and to erect and maintain on such land steam and other engines and machinery: Provided always, that no entry shall be made on any land for the purposes aforesaid, except with the consent of the proprietors thereof, until the amount of compensation for the damage to be occasioned by such entry, and by the execution and maintenance of the works authorised as aforesaid, shall have been agreed upon or ascertained, as the case may be, and paid, under the provisions hereinafter contained or agreed to.

**Sect. 83.**

**NOTE.**

No entry to be made on land without consent until compensation is made.

10. It shall be lawful for the commissioners, by any such order as aforesaid, to authorise any person or persons therein mentioned to purchase and take, as the site of any engine house, or for any other purpose necessary for the works thereby authorised, any land, not being in any park or pleasure ground, in such order to be described: Provided always, that not more than three acres be purchased or taken under this clause otherwise than by agreement; and all the provisions of the Lands Clauses Consolidation Act, 1845, with respect to the purchase of land otherwise than by agreement shall apply to the purchase of any land not exceeding three acres which shall be specially described in such order, and which shall be thereby authorised to be taken otherwise than by agreement; and the provisions of the last-mentioned Act with respect to the purchase of land by agreement shall apply to the purchase of any land by such order authorised to be purchased, except as aforesaid; and all lands to be purchased or taken under this clause shall be conveyed to or held by such persons and upon such trusts as the commissioners shall by such order direct.

Power to purchase lands for sites of engine houses.

11. The compensation to be paid for the damage or injury to any lands which may be entered upon, cut through, or interfered with under any such order of the commissioners as aforesaid, may be agreed upon with the persons and in the manner provided by the Lands Clauses Consolidation Act, 1845, with respect to the purchase of land otherwise than by agreement; and the persons who in such order of the commissioners shall be authorised to execute the works in such order mentioned shall, for the purposes of the last-mentioned Act and of this Act, be deemed the promoters of the undertaking; and all other the provisions of the Lands Clauses Consolidation Act, 1845, shall be incorporated with this Act, and shall apply thereto, and to the works and purchases to be authorised by the commissioners, in such and the same manner as if the works and purchases which shall be authorised by the commissioners had been set forth and authorised to be executed and made by this Act.

The Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), incorporated with this Act.

## THE RAILWAYS CLAUSES ACT, 1863.

(26 & 27 VICT. c. 92.)

*An Act for consolidating in one Act certain provisions frequently inserted in Acts relating to railways.* [28th July 1863.]

\* \* \* \* \*

### PART I.

#### CONSTRUCTION OF A RAILWAY.

Application  
of Part I.  
and inter-  
pretation  
of terms.

**3.** This part of this Act shall apply to the railway authorised to be constructed by any special Act hereafter passed and incorporating this part of this Act.

In this part of this Act—

All terms used have the same meanings as the same terms have when used in the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation (Scotland) Act, 1845, respectively. . . .

Part I. of this Act dealing with the construction of a railway comprises ss. 3—19.

#### *Alteration of Engineering Works.*

Power to  
alter en-  
gineering  
works.

**4.** Notwithstanding anything in the said Railways Clauses Consolidation Acts, respectively contained, the company, in the construction of the railway may deviate from the line or level of any arch, tunnel or viaduct, described on the deposited plans or sections, so as the deviation be made within the limits of deviation shown on those plans, and subject to the limitations contained in sections eleven, twelve, and fifteen of those Acts respectively, and so as the nature of the work described be not altered, and may also substitute any engineering work not shown on the deposited plans or sections, for an arch, tunnel, or viaduct, as shown thereon; provided, that every such substitution be authorised by a certificate of the Board of Trade; and the Board of Trade may grant such certificate in case it appears to them, on due inquiry, that the company has acted in the matter with good faith, and that the owners, lessees, and occupiers of the lands in which the substitution is intended to be made consent thereto, and also that

the safety and convenience of the public will not be diminished thereby. **Sect. 4.**

Provided, that nothing in the present section shall affect any power given to the company or to the Board of Trade by sections eleven, twelve, fourteen, or fifteen of the last-mentioned Acts respectively.

This section amends ss. 11 and 13 of the Railways Clauses Consolidation Act, 1845, *ante*, pp. 286, 288.

*Level Crossings.*

\* \* \* \* \*

7. The Board of Trade may, if it appears to them necessary for the public safety, at any time after the passing of the special Act, require the company, within such time as the Board of Trade directs, and at the expense of the company, to carry the turnpike road or public carriage road either under or over the railway by means of a bridge or arch, instead of crossing the same on the level, or to execute such other works as, under the circumstances of the case, may appear to the Board of Trade best adapted for removing or diminishing the danger arising from the level crossing.

Board of Trade may require bridge instead of level crossing.

Where the road is so carried either under or over the railway, it shall not be necessary for the company to erect or maintain a lodge at the point where the road is crossed, or to appoint a person to watch or superintend the crossing thereat, nor shall they be liable to any penalty for failure so to do (a).

(a) Section 6 requires that at a level crossing the company shall erect a lodge.

8. If the Board of Trade certifies that the public safety requires that additional lands be taken by the company for the purpose of the work directed by the Board of Trade to be executed, the company may, subject to the provisions of the Lands Clauses Consolidation Act, 1845, or the Lands Clauses Consolidation (Scotland) Act, 1845, as the case may require, enter upon, take, and use all or any part of the land specified in the certificate of the Board of Trade as being necessary for the purpose of the work ; and the Board of Trade before issuing the certificate shall cause at least three months' notice to be given to any person who may be entitled to claim under the last-mentioned Acts, or otherwise, compensation in respect of the taking of such lands or in respect of such work.

Power to company to take additional land for such work.

**Sect. 8.****NOTE.**

By s. 15 of the Railways Regulation Act, 1842 (see same set out in note to s. 16 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 295), railway companies are given power to take additional lands when the Board of Trade are of opinion that for the public safety additional land should be taken.

*Junctions.*

Sections 9—12 deal with junctions between railways. Sections 10 and 11 deal with the acquisition of easements in lands of the other company for the purposes of the junction.

Company to acquire only easements in land of other railway company.

**10.** With respect to any lands belonging to the company or person to whom the other railway belongs, which the company are by the special Act authorised to use, enter upon, or interfere with, for the purposes of the junction, the company shall not, except by agreement, or unless otherwise provided in the special Act, purchase and take the same, but the company may purchase and take, and such other railway company or person may and shall sell and grant accordingly, an easement or right of using the same for the purposes of the junction.

**"Unless otherwise provided."**—It seems to be settled law that a later railway company cannot acquire compulsorily the soil and freehold in lands already vested in and actually used by an earlier railway company for the purposes of the undertaking; although the land lie within the "limits of deviation" shown by the parliamentary plans, of the later company, and that company has the usual powers of taking the lands delineated. The power for that purpose must be given in express terms. It was so determined prior to this Act in *R. v. South Wales Rail. Co.* (1850), 14 Q. B. 902; *Great Northern Rail. Co. v. East and West India Docks Co.* (1852), 7 Rail. Cas. 356; *Manchester, Sheffield and Lincolnshire Rail. Co. v. Great Northern Rail. Co.* (1851), 9 Hare, 284; *Oxford, Worcester and Wolverhampton Rail. Co. v. South Staffordshire Rail. Co.* (1852), 1 Dr. 255. Following these decisions, it has been held that the words in this section "unless otherwise provided in the special Act" are not satisfied by anything less than an express and definite provision in the special Act authorising the compulsory purchase of the land of the other company which is used for the purposes of the railway (*Dublin and Drogheda Rail. Co. v. Navan and Kingscourt Rail. Co.* (1871), 1 R. 5 Eq. 393). Where two companies have power to take the same piece of land, the court will not restrain one taking it if the other has not acquired a title in manner provided by the Lands Clauses Acts (*Bristol and North Somerset Rail. Co. v. Somerset and Dorset Rail. Co.* (1874), 22 W. R. 399, 601).

**"For the purposes of the junction."**—These words are apparently not to be confined to the actual union of the two lines, but include the formation of all works necessary for that junction, even where the junction is a branch railway (*S. C.*, p. 401; *Great Northern Rail. Co. v. East and West India Docks Co.* (1852), 7 Rail. Cas. 356, p. 368).

Not to take lands or interfere

**11.** Nothing relative to the junction in this Act contained shall be deemed to authorise the company for the purposes of the junc-

tion to take or enter upon any lands belonging to the company or person to whom the other railway belongs, or to alter or interfere with any railway, or any of the works thereof, further or otherwise than is necessary for making the junction and intercommunication between the railways, as shown on the deposited plans and sections of the railway to which the special Act relates, without the previous consent in writing in every instance of such other railway company or such person.

Sect. 11.

with works  
of other  
company  
further than  
necessary.

\* \* \* \* \*

## PART II.

## EXTENSION OF TIME.

20. Where a railway is authorised to be constructed by a special Act passed either before or after the passing of this Act, and the time limited by the special Act for the exercise of powers of compulsory purchase of lands, or of powers for construction of the railway and works, is extended by a special Act hereafter passed and incorporating this part of this Act, then and in every such case the justices, arbitrators, umpires, or juries, as the case may be, who award or assess the compensation to be made by the company to the owners or occupiers of, or other persons interested in, lands taken or used for the purposes of the railway and works, or injuriously affected by the construction thereof, shall, in estimating the amount of such compensation, have regard to, and assess compensation for, the additional damage (if any) sustained by those owners, occupiers, or other persons, by reason of the extension of time.

Parties  
aggrieved by  
extension of  
time may  
have com-  
pensation for  
additional  
damage.

21. The extension of time shall not affect any contract entered into or notice given by the company before the passing of the special Act granting the extension, for purchasing, taking, or using any lands which the company was entitled to purchase, take, or use; but every such contract and notice shall be construed and take effect, and the same proceedings may be had thereunder, and all parties thereto shall be entitled to the same rights and remedies in respect thereof, at law and in equity, as if the extension had not been granted.

Existing  
contracts  
and notices  
to take lands  
not to be  
affected.

\* \* \* \* \*

## Sect. 45.

## PART V.

## AMALGAMATION (a).

Unexecuted  
works of  
dissolved  
companies  
may be  
completed.

**45.** All works which the dissolved company is at the time of amalgamation authorised or bound to execute and complete, and which are not then executed or completed, may or shall (as the case may require) be executed or completed by the amalgamated company; and for that purpose the amalgamated company shall have and be subject to all the powers, rights, and conditions which were conferred or imposed upon the dissolved company, and which but for the passing of the amalgamating Act might have been exercised by or enforced against the dissolved company.

(a) This part (ss. 36—55) of the Act applies in all cases where two or more companies are amalgamated by special Act passed after this Act and incorporating it, and where one or both are dissolved.

Where land was sold to a company and part of the consideration was the making of certain accommodation works and rendering of certain services, and after some years the company was dissolved and the undertaking transferred to another company, specific performance of the agreement to make the works and render the services was ordered as against the purchasing company (*Fortescue v. Lostwithiel and Forcey Rail. Co.*, [1894] 3 Ch. 621; *Earl of Jersey v. Great Western Rail. Co.*, [1894] 3 Ch. 625 n).

Contracts for  
land entered  
into by  
dissolved  
companies to  
be executed.

**46.** Where the dissolved company has under any special Act entered into any contract for the purchase of or taken or used any lands, which at the time of amalgamation have not been effectually conveyed to the dissolved company, or the purchase money in respect of which has not been duly paid by the dissolved company, —then and in every such case the contract, if in force at the time of amalgamation, shall thereafter be completed by, and such lands shall be conveyed to, the amalgamated company, or as the amalgamated company directs; and the purchase money shall be paid and applied pursuant to the special Acts relating to the dissolved company; and those Acts shall, in relation to the completion of the contract and the purchase and conveyance of the lands, and the payment and application of the purchase money in respect thereof, be read and construed as if the amalgamated company were the company named in the Acts and contract.

Application  
of money  
paid into  
bank or to  
trustees.

**47.** Where any money has, before the time of amalgamation, been paid by the dissolved company, or is thereafter paid by the amalgamated company under any special Act relating to the dissolved company, into the Bank of England, or into one of the incorporated or chartered banks in Scotland, or into the Bank

**Sect. 47.**  

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of Ireland, or to any trustee or trustees, on account of the purchase of any lands, or any interest therein, or for any compensation or satisfaction, or on any other account, such money, or the stocks, funds, or securities in or upon which the same then is or thereafter may be invested by order of any court, or otherwise, and the interest, dividends, and annual produce thereof, shall be applied and disposed of pursuant to such special Act; and that and every other Act shall, in relation to such money, stocks, funds, or securities, or the interest, dividends, or annual produce thereof, be read and construed as if the amalgamated company were the company therein named with reference to the same money, stocks, funds, securities, interest, dividends, or annual produce.

As to the apportionment of the costs in respect of moneys in court when some of the companies paying in have amalgamated, see note to s. 80 of the *Lands Clauses Consolidation Act, 1845, ante, p. 199.*

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## THE ADMIRALTY LANDS AND WORKS ACT, 1864.

(27 & 28 VICT. c. 57.)

*An Act to make provision respecting the acquisition of lands required by the Admiralty for the public service, and respecting the use and disposition thereof, and the execution of works thereon.* [25th July 1864.]

[*Preamble ; repealed 56 & 57 Vict. c. 14.*]

### *Preliminary.*

Short title.     **1.** This Act may be cited as the Admiralty Lands and Works Act, 1864.

Lands vested in the Admiralty by an Order in Council under the Defence Act, 1842, shall by the Defence Act Amendment Act, 1864 (27 & 28 Vict. c. 89), s. 4, vest and be held and used according to the provisions of this Act as if the same had been purchased or taken by agreement under this Act.

Interpreta-  
tion of terms.

**2.** In this Act—

The term “the Lands Clauses Acts” means with respect to lands in England the Lands Clauses Consolidation Act, 1845, and with respect to lands in Scotland the Lands Clauses Consolidation (Scotland) Act, 1845, together with in each case the Lands Clauses Consolidation Acts Amendment Act, 1860, and with respect to lands in Ireland the Railways Act (Ireland), 1851, including Acts incorporated in or amending the same :

The terms “lands” includes any estate, term, easement, right, or interest in, to, over, or affecting lands.

In the construction of the Lands Clauses Acts in connection with this Act the term “the promoters of the undertaking” therein used shall mean the Admiralty, and the terms “lands” therein used shall have the meaning hereinbefore assigned to it.

“*Lands.*”—See the note to s. 3 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 5.

As to what is to be deemed the special Act in the construction of this Act and the Lands Clauses Acts, see ss. 4 and 5, *infra*.

## Sect. 3.

## I.—ACQUISITION OF LANDS BY AGREEMENT.

3. Subject and according to the provisions of this Act, the Admiralty may from time to time by agreement purchase or take lands requisite for Her Majesty's Naval Service, or for the use or requirements of any force or department in the employment or under the direction or control of the Admiralty, and for that purpose may enter into, execute, and do all necessary and proper contracts, assurances, and things.

Power to Admiralty to take lands by agreement.

By the Naval Works Act, 1895 (58 & 59 Vict. c. 35), *post*, it is provided with a view to the purchase of land in the United Kingdom for purpose of the navy the Defence Acts and the Military Lands Act, 1902, *post*, shall apply. The land so acquired under these Acts is to be vested and managed under this Act.

4. For the purposes of any such purchase or taking, the Lands Clauses Acts shall be incorporated with this Act (for which purpose this Act shall be deemed the special Act), except as to so much of the Lands Clauses Acts as relates to the purchase or taking of lands otherwise than by agreement (*a*), and to access to special Act (*b*).

Incorporation of Lands Clauses Acts, except provisions giving compulsory powers, etc.

(*a*) These are ss. 16—68.

(*b*) Sections 150, 151.

## II.—ACQUISITION OF LANDS UNDER SPECIAL ACTS.

5. Where by any special Act of the present or any future session compulsory powers of purchasing or taking particular lands are given to the Admiralty, the Lands Clauses Acts shall, subject to the provisions of this Act, be incorporated with the Act giving these powers (which shall for this purpose be deemed the special Act), except as to so much of the Lands Clauses Acts as relates to access to the special Act.

Incorporation of Lands Clauses Acts with special Acts.

6. If in any case, after notice has been given by the Admiralty of the compulsory purchase or taking of any lands under any special Act as aforesaid of the present or any future session, it appears to the Admiralty, from a change of circumstances, or for other reasons, unnecessary or inexpedient to complete the purchase or taking of such lands, or any part thereof, the Admiralty may within two months after giving the notice give to the parties entitled to receive the first notice a further notice to the effect that they thereby withdraw the first notice wholly or in part; and

Power to Admiralty to withdraw notice for purchase within limited time.

**Sect. 6.**

thereupon the lands comprised in the notice of withdrawal shall be discharged from the effect of the first notice wholly or to the extent of the notice of withdrawal (as the case may be): Provided that nothing herein shall—

- (1) Prejudice any claim of any owner of or person interested in such lands for compensation for such damage (if any) as he may have sustained in consequence of the giving of the first notice ; or
- (2) Give to any person receiving notice for the purchase or taking of lands any further or other right as against the Admiralty than he would have had if this enactment had not been made.

As to the effect of serving a notice to treat in the absence of such a provision, see the notes to s. 18 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 35, 41, and *R. v. Commissioners of Woods and Forests* (1850), 15 Q. B. 761.

Incorporation of Railways Clauses Acts as to correction of errors, etc., in books of reference, etc.

**7.** In every such special Act as aforesaid of the present or any future session there shall also be incorporated, where the lands authorised to be purchased or taken compulsorily are situate in England or Ireland, sections seven and ten of the Railways Clauses Consolidation Act, 1845 (*a*), and where the lands are situate in Scotland, sections seven and ten of the Railways Clauses Consolidation (Scotland) Act, 1845, for which purpose such Act of the present or any future session shall be deemed the special Act, and the Admiralty shall be deemed the company.

(*a*) See *ante*, pp. 284, 286.

Limit of time for compulsory purchases.

**8.** The powers of the Admiralty for the compulsory purchase of lands for the purposes of any such special Act as aforesaid of the present or any future session shall not be exercised after the expiration of five years from the passing of that Act.

In the absence of such a provision the period would be three years under s. 123 of the Lands Clauses Consolidation Act, 1845, and see the note thereto, *ante*, p. 249.

### III.—VESTING, MANAGEMENT, ETC., OF LANDS.

Lands to vest in Lords of Admiralty, etc., for the time being.

**9.** Lands purchased or taken by the Admiralty as aforesaid, by agreement or compulsorily, shall, according to the nature and quality of such lands, and the estate, term, or interest acquired by the Admiralty therein, vest in the Admiralty for the time being, and go to and be held by the Lord High Admiral for the time being, or the Commissioners for the time being for executing the

ce of Lord High Admiral, in succession, in trust for her Majesty, for the public service. **Sect. 9.**

Lands may be vested in the Admiralty under s. 5 of the Defence Act, 1922, by Order in Council (see Appendix). Lands acquired since 1895 by the Admiralty under the provisions of the Defence Acts and the Military Lands Acts, are to vest and be managed under this Act, and ss. 9 to 19 of this Act shall apply.

By the Admiralty Powers Act, 1865 (28 & 29 Vict. c. 124), the provisions of this Act as to the user and management of lands, and as to actions in respect of lands, shall apply in relation to all lands for the time being vested in or purchased by the Commissioners of the Admiralty (s. 1).

10. Subject to the provisions of this Act, and of any such special Act as aforesaid of the present or any future session, the Admiralty may use lands purchased or taken by them under this Act or under any such Act in such manner as may seem most beneficial for the public service, and shall have in relation thereto such powers of management and leasing, and all such other powers, and all such rights, as would be had in relation thereto by any individual holding the same for such estate, term, or interest as the Admiralty have therein. **Powers of management, etc., of lands.**

11. The Admiralty may bring or defend any action or suit in respect of any lands contracted to be purchased or taken by them under this Act, or under any such special Act as aforesaid of the present or any future session; and may bring any action of ejectment or other action or suit for recovering possession of any lands purchased or taken by them under this Act, or under any such special Act as aforesaid of the present or any future session, and may distrain or sue for any arrears of rent due to them in respect thereof; and may bring any action or suit in respect of any trespass or encroachment committed thereon or damage done thereto, or any other action or suit in respect thereof, and may defend any action or suit in respect thereof; and in every such action or suit the Admiralty may be styled "The Lord High Admiral of the United Kingdom" or "The Commissioners for executing the office of Lord High Admiral of the United Kingdom" (as the case may require), without more; and any such action or suit shall not be affected by any change in the Admiralty; and in any such action or suit the Admiralty shall be liable and entitled to pay or receive costs according to the ordinary rules observed in actions between subject and subject. **Actions and suits by and against Admiralty as to lands.**

See further provisions as to suits against the Admiralty in the Admiralty Powers Act, 1865 (28 & 29 Vict. c. 124).

In a case where persons acting under the authority of the Lords of the Admiralty entered upon land under alleged compulsory powers, and

**Sect. 11.** the owner brought an action against the Lords of the Admiralty in their official capacity to restrain the trespass, it was held that no such action would lie against the Lords of the Admiralty in their official capacity, although the defendants might be sued individually for trespass committed or authorised by them, but leave to amend in this respect was refused (*Raleigh v. Goschen*, [1898] 1 Ch. 73).

**NOTE.**

Sections 12 and 13 deal with the power of the Admiralty to recover land from their tenants, on the expiration or determination of their tenancies.

### *Sale.*

Exception from incorporation of provisions as to sale of superfluous lands.

**14.** Notwithstanding anything in this Act, such provisions of the Lands Clauses Acts as relate to the disposal of superfluous lands, (a) and to the effect of the words "grant" (b) and "dispose" respectively in any conveyance, shall not apply to lands purchased or taken by the Admiralty under this Act, or under any such special Act as aforesaid of the present or any future session.

(a) Sections 127—132, *ante*, pp. 254 *et seq.*

(b) Section 132, *ante*, p. 264.

Power to Admiralty to sell lands not required for public service.

**15.** Where any lands purchased or taken by the Admiralty under this Act, or under any such special Act as aforesaid of the present or any future session, appear to the Admiralty to be no longer required to be held by them for the public service, the Admiralty may, with the previous consent of the Treasury, sell the same, and may for that purpose enter into, execute, and do all necessary or proper contracts, assurances, and things.

Rights of pre-emption preserved.

**16.** Nothing in this Act shall take away any right of pre-emption to which any person is for the time being entitled under the Lands Clauses Acts in respect of any lands purchased or taken by the Admiralty under this Act, or under any such special Act as aforesaid of the present or any future session.

See ss. 128—130, *ante*, p. 260.

Payment of purchase money.

**17.** The purchase money payable on any sale under this Act shall be paid to Her Majesty's Paymaster-General, whose receipt shall be an effectual discharge for the same.

Lands vested indefeasibly in purchaser.

**18.** On the payment of such purchase money and the execution and delivery to the purchaser by the Admiralty of the necessary or proper assurance of the lands sold, the purchaser shall, notwithstanding any defect in the title of the Admiralty thereto,

and seised or possessed thereof for such estate or interest as Sect. 18.  
 y be expressed or intended to be assured to him, freed and  
 lutely discharged (save as in the assurance may be expressed)  
 n all prior estates, interests, rights, and claims therein or  
 eto.

9. If, nevertheless, at any time after any such sale, any such  
 r estate, interest, right, or claim as aforesaid is made out to  
 satisfaction of the Admiralty to be capable of being established  
 w or in equity, or is so established, the Admiralty shall make  
 Compensation for the same.

Compensation by  
 Admiralty  
 for prior  
 interests  
 (if any)  
 afterwards  
 established.

or the purposes of the present section the provisions of the  
 ds Clauses Acts with respect to interests in lands which have  
 mistake been omitted to be purchased shall apply and take  
 et as if the lands had not been sold by the Admiralty, or as  
 thereto as circumstances admit, with this addition, namely,—  
 such compensation shall not in any case exceed the amount of  
 purchase money received by the Admiralty on the sale of the  
 is in respect whereof such estate, interest, right, or claim is  
 e out or established, exclusive of the value of any buildings  
 mpровements erected or made thereon by the Admiralty for  
 public service.

#### IV.—WORKS.

0.—Where by any such special Act as aforesaid of the  
 ent or any future session powers for the execution of particular  
 ks are given to the Admiralty, there shall be incorporated  
 the Act giving those powers (which shall for this purpose  
 eemed the special Act) the following provisions, namely :

Incorporation of  
 Railways  
 Clauses Acts  
 as to certain  
 works, roads,  
 etc.

here the lands on which the works are authorised to be  
 executed are situate in England or Ireland, sections eighteen,  
 nineteen, twenty, twenty-one, twenty-two, and twenty-four of  
 the Railways Clauses Consolidation Act, 1845, (a) and the  
 provisions of the same Act with respect to the temporary  
 occupation of lands near the railway during the construction  
 thereof : (b)

here the lands on which the works are authorised to be  
 executed are situate in Scotland, sections eighteen, nineteen,  
 twenty, twenty-one, twenty-two, and twenty-four of the  
 Railways Clauses Consolidation (Scotland) Act, 1845, and  
 the provisions of the same Act with respect to the temporary  
 occupation of lands near the railway during the construction  
 thereof :

**Sect. 20.** And for the purposes of the present section the works authorised to be executed shall be deemed the railway, and the Admiralty shall be deemed the company, within the meaning of the incorporated provisions.

(a) *Ante*, pp. 297 *et seq.*

(b) Sections 30—44, *ante*, pp. 299 *et seq.*

#### V.—MISCELLANEOUS.

Exception from incorporation of requirements as to bonds.

**21.** Notwithstanding anything in this Act, so much of any provision by this Act incorporated with any such special Act as aforesaid of the present or any future session as requires a bond to be given in relation to any lands or works shall not be incorporated with such Act; but in any such case, in lieu of such bond, and with the same effect as if such bond were given, the Admiralty shall give an undertaking in writing to the like purport (as nearly as circumstances admit) as the condition of such bond (a).

(a) See, for example, s. 85 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 205.

Provision for purchase money, etc.

**22.** All purchase, compensation, or other money under this Act, or under any such special Act as aforesaid of the present or any future session, agreed to be paid by or recovered against the Admiralty, shall be paid by them out of money to be provided and appropriated for that purpose by Parliament.

Service of notices, etc.

**23.** Any notice, summons, writ, or other document required to be served on the Admiralty for the purposes of this Act, or of any such special Act as aforesaid of the present or any future session, may be served by being delivered to the Secretary of the Admiralty, or by being sent to him by post in a registered letter, addressed to him at the Admiralty Office, Whitehall, London, or by being left for him there; and any document so sent by post shall be considered as served on the day on which such letter would be delivered in the ordinary course of post.

Any notice, summons, writ, or other document required to be served on behalf of the Admiralty for the purposes aforesaid may be given under the hand of such officer or person as the Admiralty from time to time direct.

Application of pecuniary penalties, etc.

**24.** Notwithstanding anything in this Act, or in any Act relating to municipal corporations or to the metropolitan police, or in any other Act, any pecuniary penalty or other money

covered under this Act, or under any such special Act as **Sect. 24.**  
 aforesaid of the present or any future session, or in relation to  
 lands purchased or taken by the Admiralty under this Act or  
 under any such Act, shall be paid and applied as the Admiralty  
 direct.

**25.** The Admiralty shall not, by reason of anything done **Protection to**  
 admitted to be done in the execution or intended execution **Admiralty**  
 in pursuance of this Act or of any such special Act as aforesaid **against**  
 the present or any future session, or in relation to any lands **penalties, etc**  
 purchased or taken by them under this Act or under any such Act,  
 be liable collectively or individually to any fine, penalty, or  
 forfeiture, or to execution of any process against the person or  
 property, anything in any Act incorporated with this Act or with  
 any such Act notwithstanding.

**26.** The provisions of this Act respecting actions and suits by **Extension of**  
 against the Admiralty relative to lands shall apply in relation **provisions as**  
 to all lands for the time being purchased or taken or contracted to **to actions**  
 purchased or taken by the Admiralty under any general or **and suits.**  
 special Act in force at the passing of this Act.

**27.** Nothing in this Act shall take away or prejudicially affect **Nothing to**  
 any power, right, or authority that would or might have been **affect rights**  
 vested in or exercised by the Admiralty if this Act had not **of Admiralty.**  
 been passed.

Powers are also given to the Admiralty to purchase and take lands under  
 the Admiralty (Signal) Stations Act, 1815 (55 Geo. 3, c. 128) (see the same  
 in the Appendix), and also under the Coast-Guard Service Act, 1856  
 (& 20 Vict. c. 83), *ante*, p. 399. By the Lands Clauses Act, 1860, s. 7  
 (c. 403), the Secretary for War may use the powers of the Lands  
 Clauses Acts to purchase and take land for the purposes of the Admiralty.

## THE RAILWAYS CONSTRUCTION FACILITIES ACT, 1864.

(27 & 28 VICT. c. 121.)

*An Act to facilitate in certain cases the obtaining of powers for the construction of railways.* [29th July 1864.]

WHEREAS it is expedient to facilitate the making of branch and other lines of railway, and deviations of existing railways, and of railways in course of construction, and also the execution of new works connected with or for the purposes of existing railways :

And whereas, the object aforesaid would be promoted if, where all landowners and other parties beneficially interested are consenting to the making of a railway or the execution of a work, the persons desirous of making or executing the same were enabled to obtain power to do so on complying with the conditions of a general Act of Parliament, without being obliged to procure a special Act :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

\* \* \* \* \*

### CONTRACTS FOR LAND.

Power for promoters of railway and all persons interested in land to enter into provisional contracts for land required.

3. Where promoters of a railway intend to apply under this Act for authority to make the railway, they and all parties seised or possessed of or entitled to lands required for the railway shall, in order to the purchase or taking and sale of those lands for the railway, have all such powers and capacities as, in order to the purchase or taking and sale of lands required for an undertaking authorised by a special Act of Parliament, are conferred by the Lands Clauses Acts on the promoters of the undertaking so authorised, and on parties seised or possessed of or entitled to lands, or any estate, right, or interest in lands, required for that undertaking ; all which powers and capacities shall be enjoyed and may be exercised by the promoters, and by all such parties as aforesaid, as fully and effectually in all respects as if the promoters had obtained a special Act incorporating the Lands

clauses Acts, and authorising them to make the railway, and to purchase or take the lands required for the same ; subject, nevertheless, to the following restrictions and provisions ; namely,

**Sect. 3.**

- (1) Nothing herein shall confer on the promoters and parties aforesaid any of the powers or capacities conferred by the part of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement, or by the part of those Acts with respect to the entry upon lands by the promoters of the undertaking, or by such provisions of those Acts as provide for the determination or ascertainment of the amount of any purchase or compensation money, or the settlement of any apportionment or other matter, otherwise than by agreement (except only as to such of those provisions as provided for the determination of the amount of compensation to be paid for enfranchisement of copyholds ; and for the purposes of the present section, section 96 of the Lands Clauses Consolidation Act, 1845, relating to the enfranchisement of copyholds, shall be read and have effect as if the limitation of time therein contained were omitted therefrom) :
- (2) Any party under disability or incapacity, and not having power to sell and convey or release any lands, except under the Lands Clauses Acts, as applied by the present section, shall have capacity only to contract with the promoters for the sale of those lands, and shall not (before such a certificate of the Board of Trade, as is hereinafter provided for, comes into operation) have capacity, further or otherwise than if this Act had not been passed, to carry the contract into execution, or in pursuance thereof to convey or deliver possession of or release those lands : (a)
- (3) The promoters (before such a certificate as aforesaid comes into operation) shall be empowered by this Act only to contract for lands, and they shall not have capacity, further or otherwise than if this Act had not been passed, to take or hold lands.

(a) See s. 7 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 16.

4. Where lands required for the railway belong to or are enjoyed by her Majesty the Queen, in right of the Crown, or form part of the possessions of the Duchy of Lancaster or of the Crown or

Contracts for  
sale of lands  
belonging to  
the Crown or

**Sect. 4.** the Duchy of Cornwall, any contract for the purposes of this Act may be entered into in respect of those lands, as follows ;  
 Duchy of Lancaster or of Cornwall. namely,

In the first-mentioned case, by the Commissioners of Woods, or one of them, with the consent of the Treasury ;

In the secondly-mentioned case, by the Chancellor of the Duchy, by writing under his hand, attested by the clerk of the Council of the Duchy ;

In the thirdly-mentioned case, by the Duke of Cornwall or other the persons for the time being empowered to dispose for any purpose of lands of the Duchy.

User of or interference with public or turnpike roads.

**5.** Notwithstanding anything in this Act, it shall not be necessary for the promoters, before applying under this Act for authority to make the railway, to enter into any contract with respect to any part of a turnpike road or public highway intended to be taken or used, or to be diverted or otherwise interfered with, for the purposes of the railway ; but the Board of Trade, before they settle a draft of such a certificate as hereinafter provided for, shall be satisfied that due provision is made for the interests of the trustees or other persons having the management of every such road or highway, and for the safety and convenience of the public in relation thereto.

See ss. 16 and 46 of the Railways Clauses Consolidation Act, 1845, *ante*, pp. 290, 307.

After the promoters have contracted for the purchase of all the lands required for the railway, they may apply to the Board of Trade for a certificate, who may, after hearing all objections, issue a draft certificate to be laid before Parliament. If it is not objected to, a certificate may then be issued, which shall have all the effect of a special Act. If it is objected to, it shall not be further proceeded with, and all contracts for the purchase or taking of lands for the purposes of the undertaking shall cease to be binding on either party. Sections 6—22.

\* \* \* \* \*

## LANDS.

Incorporation of Lands Clauses Acts in certificate, except provisions giving compulsory powers, etc.

**23.** The Lands Clauses Acts shall be incorporated with the certificate (which shall for this purpose be deemed the special Act), except as may be therein excepted, and except as to the following provisions ; namely,

- (1) With respect to the purchase and taking of lands otherwise than by agreement :
- (2) With respect to the entry upon lands by the promoters of the undertaking :

So much of those Acts as provides for the determination or ascertainment of the amount of any purchase or compensation money, or the settlement of any apportionment or other matter, otherwise than by agreement (but excluding from this exception so much of those Acts as provides for the determination of the amount of compensation to be paid for enfranchisement of copyholds).

Sect. 23.

\* \* \* \* \*

INCORPORATION OF COMPANY.

Contracts relative to the purchase or taking of lands for railway, entered into by the promoters before the incorporation of the company by the certificate, shall be as binding on the company as if they had been entered into by the company.

note to s. 6 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 11.

CONSTRUCTION OF RAILWAY.

The Railways Clauses Acts shall be incorporated with the certificate (which shall be deemed the special Act), except as may therein excepted, and except as to the following provisions ;

ly,

Such of the provisions with respect to the construction of the railway and the works connected therewith as relate to the correction of errors and omissions in plans, or to plans and sections of alterations :

With respect to the temporary occupation of lands near the railway during the construction thereof :

With respect to leasing the railway :

subject to the following provisions ; namely,

Nothing herein shall confer power for the taking or using of lands for deviation or for any other purpose, otherwise than by agreement :

Any provision referring to the datum line described in the section approved of by Parliament shall be read as referring to the datum line described in the section approved of by the Board of Trade.

Incorporation  
of Railways  
Clauses Acts  
in certificate,  
except as to  
compulsory  
powers, etc.

## THE RAILWAY COMPANIES ACT, 1867.

(30 & 31 VICT. c. 127.)

*An Act to amend the Law relating to railway companies.*

[20th August 1867.]

\* \* \* \* \*

### PURCHASE OF LANDS.

Amendment  
(as to railway  
companies)  
of s. 85 of  
8 & 9 Vict.  
c. 18.

**36.** Where a company exercise the powers conferred on the promoters of the undertaking by section eighty-five of the Lands Clauses Consolidation Act, 1845, the following provisions shall have effect :

- (1) The surveyor to be appointed as in that section provided shall be appointed by the Board of Trade instead of by two justices, and all the provisions of that Act relative to a surveyor appointed by two justices shall apply to a surveyor so appointed by the Board of Trade :
- (2) The company shall give not less than seven days' notice of their intention to apply to the Board of Trade for the appointment of a surveyor to any party interested in or entitled to sell and convey the lands in question, and not consenting to the entry of the company :
- (3) The valuation to be made by the surveyor so appointed shall include the amount of compensation for all damage and injury to be sustained by reason of the exercise of the powers conferred by the said section, as far as such damage and injury are capable of estimation :
- (4) The sureties to the bond to be given by the company under that section shall, in case the parties differ, instead of being approved of by two justices, be approved of by the Board of Trade, after hearing the parties.

The sureties are only required to be approved of by the Board of Trade, in case the parties differ, and if no objection to them is made by the landowner, the bond will not be void by reason of their not being approved of by the Board of Trade (*Loosemore v. Tiverton, etc. Rail. Co.* (1882), 22 Ch. D. 25, 40 ; (1884), 9 App. Cas. 480).

A railway company cannot, since the above Act, enter under the provisions of s. 85 of the Lands Clauses Act, 1845, without conforming to this section, and in a case where the valuation had been made prior to the passing of the Act, an entry subsequent to this Act was held wrongful (*Field v. Carnarvon and Llanberis Rail. Co.* (1867), L. R. 5 Eq. 190).

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# THE REGULATION OF RAILWAYS ACT, 1868.

(31 & 32 VICT. c. 119.)

*Act to amend the Law relating to railways.* [31st July 1868.]

\* \* \* \* \*

4. If any tree standing near to a railway shall be in danger of falling on the railway so as to obstruct the traffic, it shall be lawful for any two justices, on the complaint of the company which owns such railway, to cause such tree to be removed or otherwise dealt with as such justices may order, and the justices making such order may award compensation to be paid by the company on such complaint to the owner of the tree so ordered to be removed or otherwise dealt with as such justices shall think proper, and the amount of such compensation shall be recoverable in the same manner as compensation recoverable before justices under the Railways Clauses Consolidation Act, 1845.

Removal  
of trees  
dangerous  
to railways.

\* \* \* \* \*

1. Whenever, in the case of any lands purchased or taken otherwise than by agreement for the purposes of any public railway, any question of compensation in respect thereof, or any question of compensation in respect of lands injuriously affected by the execution of the works of any public railway, is under the provisions of the Lands Clauses Consolidation Act, 1845, to be determined by the verdict of a jury empannelled and summoned as in that Act mentioned, the company or the party entitled to the compensation may, at any time before the issuing by the company [of a writ or writs] to the sheriff as by that Act directed, apply to a judge of any one of the superior courts of common law at Westminster, who shall, if he think fit, make an order for trial of the question in one of the superior courts, upon such terms and in such manner as to him shall seem fit; and the question between the parties shall be stated in an issue, to be settled in case of difference by the judge, or as he shall direct, and such issue may be entered for trial and tried accordingly, in the same manner as an issue joined in an ordinary action, at such place as the judge shall direct; and the proceedings in respect of such issue shall be regulated and subject to the control and jurisdiction of the court as in ordinary actions therein, but so nevertheless that the jury shall,

Company  
may apply to  
common law  
judge at  
Westminster  
to hear cases  
of compensa-  
tion under  
8 & 9 Vict.  
c. 18.

**Sect. 41.** where the issue relates to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to lands held therewith, deliver their verdict separately in manner provided by the forty-ninth section of the Lands Clauses Consolidation Act, 1845 (b).

(a) These words in brackets are not in the Act and have apparently been omitted inadvertently. See s. 39 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 74, and see *per* GROVE, J., in *Tanner v. Swindon Rail. Co.* (1881), 45 L. T. 209.

(b) *Ante*, p. 82.

The order for the trial of the question in the High Court may, except as to the settling of an issue in case of difference, be exercised by a master under O. 54, r. 2. An appeal lies to the judge in chambers. If the application before the master is in time, even although he refuses the order, then the judge or other higher court may make it subsequently to the time of issuing the warrant as the time when the master decided the case is to be taken as the time of the judgment of the higher court (*In re Donisthorpe and Manchester, Sheffield and Lincolnshire Rail. Co.*, [1897] 1 Q. B. 671).

In the last case the appeal from the judge was taken to the Court of Appeal. It has been since decided that the appeal from the judge lies to the Divisional Court and not to the Court of Appeal, as it is not a matter of practice or procedure within the meaning of s. 1 (4) of the Supreme Court of Judicature (Procedure) Act, 1894 (*Long v. Great Northern and City Rail. Co.*, [1902] 1 K. B. 813).

The judge of the High Court with a jury has no power to try any question of the claimant's right to compensation under this section. The power given by this section only enables the very same question, which could previously have been tried by a sheriff and a jury, to be tried by a judge of the superior court with a jury of the superior court. They can only find the amount of the compensation. See s. 23 of the Lands Clauses Consolidation Act, 1845, note, "The same shall be so settled," *ante*, p. 50. The verdict and judgment so arrived at by the judge and jury is not a judgment of the High Court under its general jurisdiction, but a judgment arrived at under the limited jurisdiction given by the Lands Clauses Act as modified by this Act. The judgment can only be carried out, therefore, by bringing an action on it in the ordinary way (*In re East London Rail. Co., Oliver's Claim* (1890), 24 Q. B. D. 507). The Court of Appeal in that case also indicated an opinion that, notwithstanding the Judicature Acts and rules, a trial in the High Court under this section cannot be by a judge without a jury. On similar grounds, the High Court cannot order a new trial of an issue which has been directed under this section as the verdict and judgment of the court are to have the same effect as the verdict and judgment of a sheriff and jury, which are final so long as they act within their jurisdiction (*Birmingham Land Co. v. London and North Western Rail. Co.* (1889), 22 Q. B. D. 435). In the case of *New River Co. v. Midland Rail. Co.* (1877), 36 L. T. (N.S.) 539, this point was not taken; the question there raised was whether the time for appealing from a verdict under this section was limited to twenty-one days, and by O. 58, rr. 9 and 15, the court held that it was not, but according to the principle laid down in the later cases above cited, no appeal lies.

Company  
may obtain  
judge's order  
instead of  
issuing  
warrant.

**42.** Whenever a company is called upon or liable under the provisions of the Lands Clauses Consolidation Act, 1845, to issue their warrant to the sheriff in the case of any disputed compensa-

n, and the company shall obtain a judge's order as in the last preceding section mentioned, the obtaining of such an order and notice thereof to the opposite party shall be a satisfaction of the company's duty in respect of the issue of the warrant.

**Sect. 42.**

Where the landowner claims compensation under s. 68 of the Lands Clauses Consolidation Act, 1845, if the company desire to avail themselves of s. 41 of this Act, they must not only take out the summons for an order under it within twenty-one days from the receipt of the claim, but the summons must be returnable so that the order can be made before the twenty-one days have expired, otherwise the claimant will be entitled to the amount claimed under s. 68 (*Tanner v. Swindon Rail. Co.* (1881), 45 L. T. 209).

**43.** The verdict of the jury and judgment of the court upon any issue authorised by this Act shall, as regards costs and every other matter incident to or consequent thereon, have the same operation and be entitled to the same effect as if that verdict and judgment had been the verdict of a jury and judgment of a sheriff upon an inquiry conducted upon a warrant to the sheriff issued by the company under the Lands Clauses Consolidation Act, 1845 (a).

Power of verdict of jury, and judgment of the court.

(a) As to these costs, see ss. 51—53, *ante*, pp. 87—90 *et seq.*

**44.** In so far as any expression used in any of the three preceding sections of this Act has any special meaning assigned to it by the Lands Clauses Consolidation Act, 1845, each such expression shall in this Act have the meaning so assigned to it.

Interpretation of certain expressions.

**45.** [Wherever under the provisions of the Lands Clauses Consolidation Act, 1845, or of any Act incorporating, altering, or amending the same, the costs of any proceedings for determining a question of disputed compensation are settled by one of the masters of the Court of Queen's Bench in England or Ireland, it shall be lawful for such masters to receive and take in respect of each folio or length of every bill of costs so settled a fee of one shilling and no more: and such fee shall be taken in money and not in stamps, and may be retained by the said masters for their own use and benefit.]

Fees to masters for determining questions of disputed compensation.

This section is repealed by the Lands Clauses (Taxation of Costs) Act, 1865, *post*, and see the Lands Clauses Act, 1869, p. 446.

\* \* \* \* \*

## THE LANDS CLAUSES CONSOLIDATION ACT, 1869.

(32 & 33 VICT. c. 18.)

*An Act to amend the Lands Clauses Consolidation Act.*

[24th June 1869.]

[*Whereas it is expedient that the provisions contained in the Lands Clauses Consolidation Act, 1845, should be amended :*

*Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :]*

The above has been repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

Costs of arbitrations, where either party so requires, to be settled by a master of superior courts.

1. [*Where in England under the Lands Clauses Consolidation Act, 1845, or any Act incorporating the same, any question of disputed compensation is determined by arbitration, the costs of and incidental to the arbitration and award shall, if either party so requires, be taxed and settled as between the parties by any one of the taxing masters of the superior courts of law ; and such fees may be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be demanded and taken in the offices of such masters, and all those enactments, including the enactments relating to the taking of fees by means of stamps, shall extend to the fees in respect of the said taxation.*]

This section, which amends s. 34 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 63, has been repealed by the Lands Clauses (Taxation of Costs) Act, 1895, *post*, and in effect re-enacted thereby. A somewhat similar provision is made in the case of assessments by juries by s. 52 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 89. The Act of 1895 was passed because there was a difference between the systems for the payment of fees for taxing costs under these two sections. Fees under this section were paid by stamps, while under s. 52 of this Act and under s. 45 of the Regulation of Railways Act, 1868, *ante*, p. 445, they were paid in cash. The two systems are now assimilated, the system of payment by stamps being the one adopted.

The cases decided under this section will be found in the notes to s. 1 of the Lands Clauses (Taxation of Costs) Act, 1895, *post*.

[Section thirty-three of the *Regulation of Railways Act, 1868*, **Sect. 2.**  
*hereby repealed, and any proceedings commenced in pursuance of*  
*section may be continued under this Act as if they had been*  
*commenced under it.*]

Repeal of  
 31 & 32 Vict.  
 c. 119, s. 33.

This section has been repealed by the Statute Law Revision Act, 1883  
 & 47 Vict. c. 39; but the repeal does not affect the repeal of s. 33 of  
*Regulation of Railways Act, 1868*.

. Where any lands by the special Act authorised to be taken  
 situate within the city and liberty of Westminster, then, with  
 ect to those lands, in every case in which any question of  
 uted compensation is required by the Lands Clauses Consoli-  
 on Act, 1845, or any Act amending the same, to be determined  
 he verdict of a jury, the high bailiff of the city and liberty of  
 tminster, or his deputy, shall be deemed to be substituted for  
 heriff throughout such of the enactments of the Lands Clauses  
 solidation Act, 1845, and any Act amending the same as relate  
 ne reference to a jury.

Provision  
 respecting  
 lands in  
 Westminster.

This section refers more particularly to ss. 38—57 of the Lands Clauses  
 solidation Act, 1845. As to meaning of "sheriff," see ss. 3, 39, 40,  
 pp. 4, 74, 77; and as to "deputy," see the cases in the note to s. 39  
 the Lands Clauses Consolidation Act, 1845.

This enactment refers only to lands authorised to be taken, and would  
 ar not to affect the case where the lands injuriously affected are within  
 minster; but as to this see *R. v. Great Northern Rail. Co.* (1849),  
 . B. 25.

. This Act may be cited as the Lands Clauses Consolidation  
 1869, and shall be construed as one with the Lands Clauses  
 solidation Act, 1845, and the Lands Clauses Consolidation  
 Amendment Act, 1860, and these Acts and this Act may be  
 together as the Lands Clauses Consolidation Acts, 1845,  
 ), and 1869.

Short title.  
 Construction  
 of Acts.

By the Interpretation Act, 1889 (52 & 53 Vict. c. 43), s. 23, the expression  
 "Lands Clauses Acts" in future Acts shall, as regards England and Wales,  
 include the above Acts and the Lands Clauses (Umpire) Act, 1883, and the  
 Lands Clauses (Taxation of Costs) Act, 1895, and any Acts for the time  
 being in force amending the same.

## THE GAS AND WATER WORKS FACILITIES ACT, 1870.

(33 & 34 VICT. c. 70.)

*An Act to facilitate in certain cases the obtaining of powers for  
the construction of gas and water works and for the supply of  
gas and water.* [9th August 1870.]

This Act was passed in order to enable companies or persons to obtain provisional orders to empower them to construct and maintain gas works and water works. It is also incorporated in s. 161 of the Public Health Act, 1875, for the purpose of enabling urban authorities to obtain provisional orders for gas undertakings, the Local Government Board being, however, substituted as the sanctioning authority. The Act is in part amended by the Gas and Water Works Facilities Act, 1870, Amendment Act, 1873 (36 & 37 Vict. c. 89), in respect of the procedure to obtain such orders.

The public general Acts dealing with gas works do not enable local authorities or gas companies to take land compulsorily for the purposes of constructing gas works. This Act provides as follows :

Incorporation  
of general  
Acts in  
provisional  
order.

**10.** The provisions of the Lands Clauses Acts shall be incorporated with every provisional order under this Act, save where the same are expressly varied or excepted by any such provisional order, and except as to the following provisions, namely—

- (1) With respect to the purchase and taking of lands otherwise than by agreement :
- (2) With respect to the entry upon lands by the promoters of the undertaking.

Where a provisional order authorises a gas undertaking the provisions of the Gasworks Clauses Act, 1847, shall be incorporated with such provisional order, save where the same are thereby expressly varied or excepted.

Where a provisional order authorises a water undertaking the provisions of the Waterworks Clauses Act, 1847, and of the Waterworks Clauses Act, 1863, shall be incorporated with such provisional order, save where the same are thereby expressly varied or excepted.

For the purposes of such incorporation a provisional order under this Act shall be deemed the special Act.

It will be seen that compulsory sections of the Lands Clauses Acts are expressly omitted in the above section.

The Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 6, allows undertakers to open and break up the soil and pavement of the several streets and bridges within the limits of the special Act in order to lay pipes, and they may in such streets do other acts necessary for the supplying of gas to the inhabitants, "doing as little damage as may be in the execution of the powers hereby, or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers."

In provisional orders where ss. 16—68 of the Lands Clauses Consolidation Act, 1845, are not incorporated, it does not appear how this compensation is to be determined.

In regard to private property s. 7 of the same Act provides as follows :

7. Provided always, that nothing herein shall authorise or empower the undertakers to lay down or place any pipe or other works into, through, or against any building or in any land, not dedicated to public use, without the consent of the owners and occupiers thereof; except that the undertakers may at any time enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act or any other Act of Parliament, and may repair or alter any pipe so laid down.

The Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), further amends both of the above Acts, and enables undertakers to sell superfluous land, and also enables persons under disabilities to convey easements and other such rights, but does not further incorporate the Lands Clauses Acts.

The materials provisions are as follows :

#### THE GASWORKS CLAUSES ACT, 1871.

1. The Gasworks Clauses Act, 1847, and this Act shall be construed together as one Act, and the provisions of this Act shall be held to repeal and supersede such of the provisions of that Act as are inconsistent with that Act.

10 & 11 Vict.  
c. 15, and this  
Act to be  
construed  
together.

3. The provisions of this Act shall apply to every gas undertaking authorised by any special Act hereafter passed, or by any provisional order made under the authority of the Gas and Water Works Facilities Act, 1870, save where the said provisions are expressly varied or excepted by any such special Act or provisional order; and every such special Act and provisional order is in this Act included in the term "the special Act."

Application  
of Act.

6. The undertakers may sell and dispose of any lands which are vested in them, or which they are authorised to purchase, or which they may hereafter acquire, and which shall not be required for the purposes of the undertaking and the provisions of the Lands Clauses Consolidation Act, 1845, ss. 128 to 132 (both sections inclusive), shall apply to any such sale; and the undertakers may also from time to time sell and dispose of any works, buildings, or erections on any lands belonging to them which shall not be required for the purposes of the undertaking.

Sale of  
superfluous  
lands.

9. Nothing in this or the special Act shall exonerate the undertakers from any indictment, action, or other proceeding for nuisance in the event of any nuisance being caused by them.

Undertakers  
not exempted  
from  
indictment.

10. Persons empowered by the Lands Clauses Consolidation Act, 1845, to sell and convey or release lands, may, if they think fit, subject to the provisions of that Act, and of the Lands Clauses Consolidation Acts Amendment Act, 1860, grant to the undertakers any easement, right, or

Power  
to take  
easements,  
etc., by  
agreement.

**Sect 10.****NOTE.**

privilege, not being an easement of water, required for the purposes of the special Act, in, over, or affecting any such lands; and the provisions of the last-mentioned Acts with respect to lands and rentcharges, as far as the same are applicable in this behalf, shall extend and apply to such grants, or to such easement, rights, or privileges as aforesaid.

Damage caused to private property during the construction of gasworks and laying of pipes, therefore, gives rise to a cause of action, and not to a claim for compensation inasmuch as the undertakers are not authorised to do any such damage.

Thus, where a gas company in laying pipes along a road which passed alongside premises, and over certain arches occupied as cellars, damaged these arches, the company was held, under s. 7 of the Gasworks Clauses Act, to be liable to an action for damages (*Thompson v. Sunderland Gas Co.* (1877), 2 Ex. D. 429). A company will also be liable to be restrained by injunction from laying pipes in private land (*Maddock v. Wallasey Local Board* (1886), 55 L. J. Q. B. 267), and from obstructing ancient lights by a gasometer, and from excavating their land in such a manner as to draw silt from the adjoining land and so cause a subsidence (*Jordeson v. Sutton, Southcoates and Drypool Gas Co.*, [1899] 2 Ch. 217).

As there are no provisions in the above-mentioned Acts in regard to mines as in the Railways Clauses Act, 1845, ss. 77—85, *ante*, pp. 328 *et seq.*, and in the Waterworks Clauses Act, 1847, ss. 18—27, *ante*, pp. 358 *et seq.*, a difficulty has arisen as to the rights of mine-owners who own mines beneath streets and highways. These rights were discussed in *Normanton Gas Co. v. Pope* (1883), 52 L. J. Q. B. 629. In that case the lessees of minerals under and adjacent to the highway, under which the company had laid pipes, had by working these minerals let down the soil and injured the pipes. It was held that the company was entitled to support for the pipes, and that the mine-owner was entitled to compensation for the burden thus imposed upon him. The company were, therefore, entitled to recover damages in an action for the injury done to the pipes, while the owner of the minerals, it was held, could recover compensation, not by counterclaim in the action, but in an arbitration for the limitation put upon his user of the land. Such an arbitration might not be under the Lands Clauses Acts as the arbitration clauses need not be incorporated; but, in such a case, the arbitration might probably be conducted under the provisions of the Companies Clauses Act, 1845 (8 & 9 Vict. c. 16).

The general rule as to support in cases where there are no special statutory provisions was laid down in *In re Corporation of Dudley* (1881), 8 Q. B. D. 86, and that rule was stated by FRY, L.J., in the *Normanton Case*, *supra*, p. 636, thus: "Where an obligation is created by statute to maintain something which requires support, or where there is a statutory duty to do something, the necessary result of doing which is that some structure will be required for which support is necessary, and where compensation is given for damage done in the exercise of the powers of the Act, then the courts will, as a rule, hold that such a structure is entitled to support and that it cannot be interfered with by adjoining owners."

See, further, as to support, the note to s. 79 of the Railways Clauses Act, 1845, *ante*, p. 333, and see the notes to the Public Health Act Amendment Act, 1883, *post*.

As regards the construction of works for lighting by local authorities under the Public Health Act, 1875, or under any general or local Act or provisional order, the mining clauses of the Waterworks Clauses Act, 1847, ss. 18—27, are now to be deemed incorporated. See the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (46 & 47 Vict. c. 37), *post*.

## THE ELEMENTARY EDUCATION ACT, 1870.

(33 &amp; 34 VICT. c. 75.)

*An Act to provide for public elementary education in England and Wales.* [9th August 1870.]

\* \* \* \* \*

The sections of this Act dealing with the purchase and taking of land are practically left unaltered by the Education Act of 1902, but are subject to the modifications specified in the 3rd schedule thereof. See s. 25 (3).

19. Every school board for the purpose of providing sufficient public school accommodation for their district, [*whether in obedience to any requisition*] (a) or not, may provide, by building or otherwise, school-houses properly fitted up, and improve, enlarge, and fit up any school-house provided by them, and supply school apparatus and everything necessary for the efficiency of the schools provided by them, and purchase and take on lease any land, and any right over land, or may exercise any of such powers.

Powers of school board for providing schools.

(a) The words in italics have been repealed by s. 25 (3) of the Education Act, 1902 (2 Edw. 7, c. 42).

All school boards in England and Wales except that of London were abolished by the Education Act, 1902. The local education authority as defined by s. 1 of that Act have throughout their area the powers of a school board under the Elementary Education Acts, 1870—1900 (see s. 5). Section 1 is as follows :

1. For the purposes of this Act, the council of every county and of every county borough shall be the local education authority :

Provided that the council of a borough with a population of over ten thousand or of an urban district with a population of over twenty thousand shall, as respects that borough or district, be the local education authority for the purpose of Part III. of this Act, and for that purpose, as respects that borough or district, the expression "local education authority" means the council that borough or district.

References to school boards and school districts are to be construed as references to local education authorities and the areas for which they act (Sched. III. (1)).

The Education Act, 1902, was extended and adapted to London by the Education (London) Act, 1903, *post*. See more particularly s. 2 (2) in regard to the compulsory purchase of sites.

This section was extended to any offices required by the school board for London (35 & 36 Vict. c. 27, s. 1).

20. With respect to the purchase of land by school boards for the purposes of this Act, the following provisions shall have effect ; (that is to say,)

Compulsory purchase of sites.

(1) The Lands Clauses Consolidation Act, 1845, and the Acts Regulations as to the

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purchase  
of land  
compulsorily.

amending the same, shall be incorporated with this Act, except the provisions relating to access to the special Act; and in construing those Acts for the purposes of this section the special Act shall be construed to mean this Act, and the promoters of the undertaking shall be construed to mean the school board, and land shall be construed to include any right over land:

Publication  
of notices.

- (2) The school board, before putting in force any of the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, shall—

Service of  
notices.

- (a) Publish during three consecutive weeks in the months of October and November, or either of them, a notice describing shortly the object for which the land is proposed to be taken, naming a place where a plan of the land proposed to be taken may be seen at all reasonable hours, and stating the quantity of land that they require; and shall further,
- (b) After such publication, serve a notice in manner mentioned in this section on every owner or reputed owner, lessee or reputed lessee, and occupier of such land, defining in each case the particular land intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such land;
- (c) Such notice shall be served—
  - (a) By delivery of the same personally on the person required to be served, or, if such person is absent abroad, to his agent; or
  - (b) By leaving the same at the usual or last known place of abode of such person as aforesaid, or by forwarding the same by post in a registered letter, addressed to the usual or last known place of abode of such person:

Petition to  
Education  
Department.

- (3) Upon compliance with the provisions contained in this section with respect to notices the school board may, if they think fit, present a petition under their seal to the Education Department, praying that an order may be made authorising the school board to put in force the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, so far as regards the land therein mentioned; the petition shall state the land intended to be taken and the purposes for which it is required, and the names of the owners, lessees,

and occupiers of land who have assented, dissented, or are neuter in respect of the taking of such land, or who have returned no answer to the notice, and shall be supported by such evidence as the Education Department may from time to time require :

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- (4) If, on consideration of the petition and proof of the publication and service of the proper notices, the Education Department think fit to proceed with the case, they may, if they think fit, appoint some person to inquire in the district in which the land is situate respecting the propriety of the proposed order, and also direct such person to hold a public inquiry :
- (5) After such consideration and proof, and after receiving a report made upon any such inquiry, the Education Department may make the order prayed for, authorising the school board to put in force with reference to the land referred to in such order the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as they may think fit ; and it shall be the duty of the school board to serve a copy of any order so made in the manner and upon the persons in which and upon whom notices in respect of the land to which the order relates are required by this Act to be served :
- (6) No order so made shall be of any validity unless the same has been confirmed by Act of Parliament ; and it shall be lawful for the Education Department, as soon as conveniently may be, to obtain such confirmation, and the Act confirming such order shall be deemed to be a public general Act of Parliament : No order valid until confirmed by Parliament.
- (7) The Education Department, in case of their refusing or modifying such order, may make such order as they think fit for the allowance of the costs, charges, and expenses of any person whose land is proposed to be taken of and incident to such application and inquiry respectively :
- (8) All costs, charges, and expenses incurred by the Education Department in relation to any order under this section shall, to such amount as the Commissioners of Her Majesty's Treasury think proper to direct, and all costs, charges, and expenses of any person which shall be so allowed by the Education Department as aforesaid Costs, how to be defrayed.

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shall, become a charge upon the school fund of the district to which such order relates, and be repaid to the [*said Commissioners of Her Majesty's*] (a) Treasury or to such person respectively, by annual instalments not exceeding five, together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such direction of the said commissioners, or allowance of such costs, charges, and expenses respectively upon so much of the principal sum due in respect of the said costs, charges, and expenses as may from time to time remain unpaid.

The School Sites Acts [*as defined in the fourth schedule to this Act*] (a) shall apply in the same manner as if the school board were trustees or managers of a school within the meaning of those Acts, and land may be acquired under any of the Acts mentioned in this section, or partly under one and partly under another Act.

(a) These words have been repealed by the Statute Law Revision Act, 1893.

**"The purchase of land."**—As to the substitution of the local education authority for school boards, see note to s. 19, *supra*. For school fund read the fund or rate out of which the expenses of the local education authority are payable (Sched. III (2)). Besides the powers and provisions in the Lands Clauses Act, the Tithe Act, 1878 (41 & 42 Vict. c. 42), provides that when land which is charged with rentcharge in lieu of tithes is taken for the erection of any school under the Elementary Education Act the rentcharge shall be redeemed in the manner therein provided (s. 1, see *post*, p. 472).

In order to take land compulsorily, a provisional order must be obtained, which order must be confirmed by Act of Parliament. Similar provisions will be found in most recent Acts which enable local authorities to take lands for public purposes. See, for example, the Public Health Act, 1875, *post*, and the Housing of the Working Classes Act, 1890, *post*. The service of the notice on the owners prior to applying for a provisional order does not bind the local authority to take the land, nor has it in any way the effect of a notice to treat given under s. 18 of the Lands Clauses Act, 1845, *ante*, p. 28 (*Burgess v. Bristol Sanitary Authority* (1886), 50 J. P. 455, a case under the similar proviso in the Public Health Act, 1875, and see *Corporation of Huddersfield v. Jacomb* (1874), L. R. 10 Ch. 92).

Where part of an owner's land is taken for a school, he is entitled to receive compensation for injury caused to dwelling-houses on the remainder of his land by reason of the noise likely to be caused by the children at the school (*R. v. Pearce, Ex parte School Board for London* (1898), 78 L. T. 681).

A school board might interfere with ancient lights or other easements before purchasing the same, the proper remedy of the owner of the easement being to claim compensation under s. 68 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 111 (*Clark v. London School Board* (1874), L. R. 9 Ch. 120; *London School Board v. Smith, W. N.* (1895) 37). And see note to s. 18 of the Lands Clauses Act, 1845, *ante*, p. 28.

They might apparently interfere with these incorporeal rights whether they have obtained a provisional order or not: thus where a school board purchased land by agreement which land was subject to a restrictive covenant, it was held that they might break the covenant without the consent of the covenantee, whose only remedy was to claim compensation under s. 68 of the Lands Clauses Consolidation Act, 1845 (*Kirby v. School Board for Harrogate*, [1896] 1 Ch. 437).

Where a school board had given notice to treat for the purchase of a parcel of land, part of a building estate, and described as bounded by a proposed road, and the compensation for the land so described was settled by a jury, it was held that the board had acquired no rights over the adjoining land and could not insist on the owner constructing the road (*In re London School Board and Foster* (1902), 87 L. T. 700).

**"For the purposes of this Act."**—The building of a certified industrial school within the meaning of the Industrial Schools Act, 1866, is one of the purposes of this Act, and a school board had the same powers for that purpose as for the purpose of providing sufficient school accommodation for their district (s. 28).

It has been held that a school board might take land authorised to be taken for the purpose of exchanging it for land of another owner, the owner who was to receive this land having undertaken to form it into a public road, which would be advantageous to the school intended to be erected (*Rolls v. London School Board* (1884), 27 Ch. D. 639). And see note to s. 18 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 28.

**"The special Act."**—By the Elementary Education Act of 1873 (36 & 37 Vict. c. 86), which amends the Act of 1870, which is the principal Act, it is provided by s. 15 as follows:

15. For the purpose of the purchase of land otherwise than by agreement under section 20 of the principal Act, the Act confirming an order of the Education Department for such purpose, together with the principal Act, shall be deemed to be the special Act.

**"The School Sites Acts."**—These Acts, which were mentioned in the fourth schedule to this Act, were:

The School Sites Acts of 1841, 1844, 1849, and 1851, respectively; 4 & 5 Vict. c. 38; 7 & 8 Vict. c. 37; 12 & 13 Vict. c. 49; and 14 & 15 Vict. c. 24. As the schedule has been repealed, the Acts now referred to are those included under the heading of the School Sites Acts, as mentioned in the Short Titles Act, 1896 (59 & 60 Vict. c. 14), which, besides the above, includes also the School Sites Act, 1852 (15 & 16 Vict. c. 49). The principal of these is the School Sites Act, 1841, the object of which was to facilitate the conveyance of sites for schools, and for that purpose it enabled tenants-in-tail and for life to grant the fee of small portions of land upon certain conditions; various other persons under disability were also empowered to convey. The later Acts have slightly extended these powers.

**21.** For the purpose of the purchase by the managers of any public elementary school of a school-house for such school, or a site for the same, the Lands Clauses Consolidation Act, 1845, and the Acts amending the same (except so much as relates to the purchase of land otherwise than by agreement), shall be incorporated with this Act; and in construing those Acts for the purposes of this section the special Act shall be construed to mean this Act, and the promoters of the undertaking shall be construed

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Purchase  
of land by  
managers  
of public  
elementary  
school.

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The conveyance of any land so purchased may be in the form prescribed by the School Sites Acts, or any of them, with this modification, that the conveyance shall express that the land shall be held upon trust for the purposes of a public elementary school within the meaning of this Act, or some one of such purposes which may be specified, and for no other purpose whatever.

Land may be acquired under the Acts incorporated with this section, or under the School Sites Acts, or any of them, or partly under one and partly under another Act.

Any persons desirous of establishing a public elementary school shall be deemed to be managers for the purpose of this section if they obtain the approval of the Education Department to the establishment of such school.

By s. 3 of this Act "the term 'managers' includes all persons who have the management of any elementary school, whether the legal interest is or is not vested in them." As to these managers, see s. 6 (2) of the Education Act, 1902.

Sale or lease  
of school-  
house.

**22.** The provisions of the Charitable Trusts Acts, 1853 to 1869, which relate to the sale, leasing, and exchange of lands belonging to any charity (*a*), shall extend to the sale, leasing, and exchange of the whole or any part of any land or school-house belonging to a school board which may not be required by such board, with this modification, that the Education Department shall for the purposes of this section be deemed to be substituted in those Acts for the Charity Commissioners.

(*a*) These are 16 & 17 Vict. c. 137 ; 18 & 19 Vict. c. 124 ; 23 & 24 Vict. c. 136 ; 25 & 26 Vict. c. 112 ; 32 & 33 Vict. c. 110 ; and since 1869—50 & 51 Vict. c. 49 ; 54 & 55 Vict. c. 17 ; 57 & 58 Vict. c. 35.

As to construing references in these Acts or in any scheme, see Sched. III. (11) of the Education Act, 1902.

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## THE PUBLIC HEALTH ACT, 1875.

(38 & 39 VICT. c. 55.)

*An Act for consolidating and amending the Acts relating to public health in England.* [11th August 1875.]

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The following sections deal with the purchase and taking of lands by local authorities under this Act. Some other public Acts provide for the taking of land by incorporating these sections of this Act, or some of them, as, for example : The Housing of the Working Classes Act, 1890, Part III., s. 57 ; the Local Government Act, 1888, s. 65 ; and the Allotments Act, 1887, s. 3 (4).

### PURCHASE OF LANDS.

**175.** Any local authority may for the purposes and subject to the provisions of this Act purchase or take on lease sell or exchange any lands, whether situated within or without their district ; they may also buy up any water-mill dam or weir which interferes with the proper drainage of or the supply of water to their district. Power to purchase lands.

Any lands acquired by a local authority in pursuance of any powers in this Act contained and not required for the purpose for which they were acquired shall (unless the Local Government Board otherwise direct) be sold at the best price that can be gotten for the same, and the proceeds of such sale shall be applied towards discharge, by means of a sinking fund or otherwise, of any principal moneys which have been borrowed by such authority on the security of the fund or rate applicable by them for the general purposes of this Act, or if no such principal moneys are outstanding shall be carried to the account of such fund or rate.

**"Any local authority."**—By s. 4, "local authority" means "urban sanitary authority and rural sanitary authority," and now, by s. 21 of the Local Government Act, 1894 (56 & 57 Vict. c. 73), urban sanitary authorities shall be called urban district councils, except when they are city or borough councils, and for every rural sanitary district there shall be a rural district council, which district council shall have all the powers of the rural sanitary authority.

**"Lands."**—See note to next section, *post*, p. 459.

**176.** With respect to the purchase of lands by a local authority for the purposes of this Act, the following regulations shall be observed ; (that is to say,) Regulations as to purchase of land.

(1) The Lands Clauses Consolidation Acts, 1845, 1860, and

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1869, shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845 :

- (2) The local authority, before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, shall—

Publish once at the least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district, an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands that they require ; and shall further

Serve a notice in the month of December on every owner or reputed owner, lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents dissents or is neuter in respect of taking such lands :

- (3) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they think fit, present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners lessees and occupiers of lands who have assented dissented or are neuter in respect of the taking such lands, or who have returned no answer to the notice ; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires :
- (4) On the receipt of such petition and on due proof of the proper advertisements having been published and notices served the Local Government Board shall take such petition into consideration, and may either dismiss the

same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners lessees and occupiers thereof: Sect. 176.

- (5) After the completion of such inquiry the Local Government Board may, by provisional order, empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit; and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served.

Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held before the expiration of one month from the last day of the second of the two months in which the notices are given; and any notices or orders by this section required to be served on a number of persons having any right in over or on lands in common may be served on any three or more such persons on behalf of all such persons.

**"Lands."**—By s. 4, "lands" and "premises" include messuages, buildings, lands, easements, and hereditaments of any tenure. The Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3, provides that in any Act passed after the year 1850, the expression "land" shall include messuages, tenements, and hereditaments, houses and buildings of any tenure. This latter definition omits the word "easements," which are, however, included in the word "hereditaments." See s. 3 of the Lands Clauses Consolidation Act, 1845, note "Lands," *ante*, p. 5.

**Mines.**—Section 334 of this Act provides that nothing in this Act shall be construed to extend to mines so as to interfere with or obstruct the efficient working of the same; but in the case of *Re Corporation of Dudley* (1881), 8 Q. B. D. 86, LINDLEY and BRETT, L.JJ., both expressed the opinion that s. 334 only extended to nuisances (pp. 96. 97). In respect of support of sewers, pipes, and other structures, the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (46 & 47 Vict. c. 37), *post*, incorporates the "mine" clauses of the Waterworks Clauses Act, 1847.

**Water rights.**—By reason of s. 332 of this Act, it is considered that no provisional order can be granted empowering a local authority to acquire water rights in land, or to abstract water from a stream, and that, therefore,

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power must be obtained by Act of Parliament. An opinion to this effect has been given by the officers of the Crown, and the Local Government Board do not promote Bills to confirm provisional orders for this purpose.

*Tithes.*—Provision is made for the redemption of tithes on land taken to be used for public purposes by the Tithe Act, 1878 (41 & 42 Vict. c. 42), ss. 1, 2, *post*, p. 472.

*Soil under streets.*—Where the surface of land has been dedicated to the public for a street, the subsoil still remains the property of the landowner, and a local authority cannot erect a public convenience under a street without acquiring such subsoil (*Baird v. Tunbridge Wells Corporation*, [1896] A. C. 434); and as to the meaning of street, see *Fareham Local Board v. Smith* (1891), 7 T. L. R. 443; *Coverdale v. Charlton* (1878), 4 Q. B. D. 104; *Rolls v. St. George-the-Martyr* (1880), 14 Ch. D. 785; and *Wandsworth District Board of Works v. United Telephone Co.* (1884), 13 Q. B. D. 904. Water pipes may be laid down in a private road by a sanitary authority having the general control of the streets, making compensation afterwards for injury done under s. 308 (s. 54; and see *Hill v. Wallasey Local Board*, [1894] 1 Ch. 133).

*Superfluous land.*—See the notes to s. 127 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 254. That section is expressly excepted in the case of lands taken compulsorily by s. 176. Section 128 of the Lands Clauses Consolidation Act, 1845, is not however, excluded, which gives a right of pre-emption to the person from whose land they were severed, and to adjoining owners (*ante*, p. 260).

Where a corporation had acquired land compulsorily for the purpose of carrying out a public improvement, and they proposed to abandon that purpose and use the land for some other purpose, the court granted an injunction to restrain them from so doing (*Attorney-General v. Corporation of Sunderland*, W. N. (1873) 174; 2 Ch. D. 634; and see also *Attorney-General v. Hawcell Urban District Council*, [1900] 2 Ch. 377).

*Solicitors' costs.*—Land purchased voluntarily under this Act is purchased in accordance with the Lands Clauses Acts, and the exception in rule 11 of Schedule I., Part 1, of General Order under the Solicitors Remuneration Act, 1881, which excludes the scale in the case of purchases under the Lands Clauses Act, applies to purchases under this Act. The charges of the vendor's solicitor, which a local board had agreed to pay, were held not to be limited to the amount mentioned in the scale (*In re Burdekin*, [1895] 2 Ch. 136).

**"For the purposes of this Act."**—The principal purposes of this Act for which land may be required are, under Part III., to construct works for the disposal of sewage (s. 27), public conveniences (s. 39), receptacles for dust and rubbish (s. 45), waterworks (s. 51), hospitals (s. 131), and mortuaries (s. 141); and, under Part IV., to widen and enlarge streets and to make new streets (s. 154), to provide public pleasure grounds, market places, and market houses (s. 166), and slaughter-houses. Power is also given to construct a cemetery by the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31).

The powers as to the construction of public conveniences and waterworks, and the powers to do the work under Part IV., mentioned above, were given to urban sanitary authorities, now urban district councils. These bodies are also given, by s. 144, the powers of the highway authorities under the Highway Act, 1835 (5 & 6 Will. 4, c. 50). See Appendix. The powers of the Open Spaces Acts, 1877 and 1890, are also given to urban sanitary authorities and certain rural sanitary authorities. See the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), s. 5.

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 25 (1), in rural districts the powers as regards highways are transferred to the rural district council, and by sub-s. (5) of the same section, rural district councils may have such of the powers of urban districts as the Local Government Board may by general order direct. As to the powers of parish councils to acquire land, see ss. 9 and 10 of the Local Government Act, 1894, *post*.

Under ss. 16 and 54 local authorities are authorised to lay sewers and water-pipes in or across streets, and, in certain cases, in private lands. In such cases no provisional order is required, nor need any notice to treat be delivered, nor do the authorities require to purchase the land. They are bound, however, to make compensation under s. 308, *post* (*Thornton v. Nutter* (1867), 31 J. P. 419; *Roderick v. Aston Local Board* (1877), 5 Ch. D. 328).

**Sub-section (1).**—With the Lands Clauses Acts here mentioned are to be read the Lands Clauses (Umpire) Act, 1883 (46 & 47 Vict. c. 15), *post*, and the Lands Clauses (Taxation of Costs) Act, 1895 (57 & 58 Vict. c. 11), *post*.

Section 127 deals with the sale of superfluous land, *ante*, p. 254, as to the sale of which see note, *supra*. As to what is the special Act, and who are the promoters of the undertaking, see s. 316, *post*, p. 470.

District councils taking land under this section for public improvements will have to make good the deficiencies in the poor's rate and land tax under s. 133 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 265 (*Governors of Poor of Bristol v. Mayor of Bristol* (1887), 18 Q. B. D. 549).

**Sub-section (2).**—*Serve a notice.*—As to service, see s. 267, *post*; and as to service on commoners, see proviso to this section.

The service of a notice under this section does not bind the local authority to take the land, although the provisional order may be confirmed (*Burges v. Urban Sanitary Authority of Bristol* (1886), 50 J. P. 455; and see *Burr v. Wimbledon Local Board*, W. N. (1887) 155; *Birch v. Vestry of St. Marylebone* (1869), 20 L. T. (N.S.) 697).

As to whether a local authority have power to injuriously affect land without a provisional order, reference may be made to *Kirby v. Harrogate School Board*, [1896] 1 Ch. 437, a case under the Elementary Education Act, 1870, referred to, *ante*, p. 455.

**"Owner."**—By s. 4 "owner" means the person for the time being receiving the rack-rents of the lands or premises in connection with which the word is used, whether on his own account, or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent. After the provisional order is passed, the word "owner" will have the meaning given to it in the Lands Clauses Consolidation Act, 1845, s. 3, *ante*, p. 4, namely, the person entitled to sell and convey. Probably such owner ought to be served with the notice under this section.

**Provisional Order.**—The provisions relating to inquiries by the Local Government Board will be found in ss. 293—296, and to granting provisional orders in ss. 297, 298.

As to extending the time limited for compulsory purchase by a second Act or provisional order, see *Bentley v. Rotherham and Kimberworth Local Board* (1876), 4 Ch. D. 588.

**177.** Any local authority may, with the consent of the Local Government Board, let for any term any lands which they may possess, as and when they can conveniently spare the same. Power to let lands.

**Sect. 176.**

**NOTE.**

**Sect. 178.**

Provision  
for lands  
belonging to  
the Duchy of  
Lancaster.

**178.** The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit, (but subject and without prejudice to the rights of any lessee tenant or occupier,) from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration, the whole or any part of any lands belonging to her Majesty her heirs or successors in right of the said Duchy, or any right interest or easement in through over or on any such lands which for the purposes of this Act such local authority from time to time deem it expedient to purchase ; and on payment of the purchase money, as provided by the Duchy of Lancaster Lands Act, 1855 (*a*), the said Chancellor and Council may grant and assure to the said authority, under the seal of the said Duchy, in the name of her Majesty her heirs or successors the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act, 1855.

(*a*) 18 & 19 Vict. c. 58.

**ARBITRATION.**

Mode of  
reference to  
arbitration.

**179.** In case of dispute as to the amount of any compensation to be made under the provisions of this Act (except where the mode of determining the same is specially provided for) (*a*), and in case of any matter which by this Act is authorised or directed to be settled by arbitration, then, unless both parties concur in the appointment of a single arbitrator, each party shall appoint an arbitrator to whom the matter shall be referred.

(*a*) Where lands have been taken compulsorily, the compensation is not settled under the arbitration clauses of this Act, but is to be settled according to the provisions of the Land Clauses Act which are incorporated by s. 176 (*Ex parte Rayner* (1878), 3 Q. B. D. 446). If lands are injuriously affected by reason of work done under a provisional order made pursuant to s. 176, which incorporates s. 68, the compensation for such injurious affection ought probably to be settled under the Lands Clauses Acts. In the case of injury done to lands under the other powers of this Act, as in laying sewers or levelling streets, the compensation should be settled under the arbitration clauses of this Act. See s. 308, *post*.

In some local Acts provision has been made that compensation for injury to land should be settled by arbitration in the manner provided by the Public Health Act, 1875. See, for example, the *Ascot District Gas Act*, 1882 (45 & 46 Vict. c. cxlii.), s. 26, referred to in *In re Mackenzie and the Ascot Gas Co.* (1886), 17 Q. B. D. 114.

Regulations  
as to  
arbitration.

**180.** With respect to arbitrations under this Act, the following regulations shall be observed ; (that is to say,)

- (1) Every appointment of an arbitrator under this Act when made on behalf of the local authority shall be under their common seal, and on behalf of any other party under his hand, or if such party be a corporation aggregate under their common seal : **Sect. 180.**
- (2) Every such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same :
- (3) After the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation :
- (4) If for the space of fourteen days after any matter by this Act authorised or directed to be settled by arbitration has arisen, and notice in writing by one party who has duly appointed an arbitrator has been given to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fails to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties :
- (5) If before the determination of any matter so referred any arbitrator dies or refuses or becomes incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead ; and if such party fails so to do for the space of seven days after notice in writing from the other party in that behalf, the remaining arbitrator may proceed ex parte ; and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made :
- (6) If a single arbitrator dies or becomes incapable to act before the making of his award, or fails to make his award within twenty-one days after his appointment, or within such extended time, if any, as may have been duly appointed by him for that purpose, the matters referred to him shall be again referred to arbitration under the provisions of this Act, as if no former reference had been made :
- (7) Where there is more than one arbitrator, the arbitrator shall, before they enter on the reference, appoint by writing under their hands an umpire, and if the person appointed to be umpire dies or becomes incapable to

Sect. 180.

act, the arbitrators shall forthwith appoint another person in his stead ; and if the arbitrators neglect or refuse to appoint an umpire for seven days after being requested so to do by any party to the arbitration, the Local Government Board shall, on the application of any such party, appoint an umpire :

- (8) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been duly appointed by them for that purpose, the matters referred shall be determined by the umpire :
- (9) The time for making an award by arbitrators under this Act shall not in any case be extended beyond the period of two months from the date of the submission, and the time for making an award by an umpire under this Act shall not in any case be extended beyond the period of two months from the date of the reference of the matters to him :
- (10) Before any arbitrator or umpire enters on a reference under this Act, he shall make and subscribe the following declaration before a justice of the peace : (that is to say,)

“ I, *A. B.*, do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the Public Health Act, 1875.

*A. B.*”

- (11) Such declaration shall be annexed to the award when made ; and any arbitrator or umpire who wilfully acts contrary to such declaration shall be guilty of a misdemeanor :
- (12) Any arbitrator or arbitrators or umpire appointed by virtue of this Act may require the production of such documents in the possession or power of either party as they or he may think necessary for determining the matters referred, and may examine the parties or their witnesses on oath :
- (13) The costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators, or (in case the matters referred are determined by an umpire) of the umpire :

- (14) Any submission to arbitration under the provisions of this Act may be made a rule of any of the superior courts, on the application of any party thereto : Sect. 180.
- (15) The award of arbitrators or of an umpire under this Act shall be final and binding on all parties to the reference.

*Cf.* the somewhat similar provisions as to arbitrator in the Lands Clauses Consolidation Act, 1845, ss. 23, 25—37, and the notes thereto, and *ante*, pp. 49, 53 *et seq.* ; and see also the Arbitration Act, 1889, *post*, which will be applicable, in so far as it is consistent with the provisions of this section.

**Apportionment of arbitrator.**—(Sub-s. (1).) The provisions of the section are mandatory and not merely directory, therefore an appointment of an arbitrator by a claimant not in writing under his hand is invalid. Prior to the Arbitration Act, 1889, in a case where an arbitrator had not been appointed in writing the court refused to make the award a rule of court (*In re Gifford and the Bury Town Council* (1888), 20 Q. B. D. 368).

**Appointment of umpire.**—(Sub-s. (7).) Under the somewhat similar provisions in the Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 125, it was held that the arbitrators if called upon by the parties could validly appoint an umpire at any time after twenty-one days and within the period limited for making the award (*Holdsworth v. Wilson* (1863), 32 L. J. Q. B. 289 ; *S.C.*, in lower court under name *Holdsworth v. Barsham* (1862), 31 L. J. Q. B. 145).

**Time for making the award.**—(Sub-s. (9).) The provisions in sub-s. (9) deal only with the power of the arbitrator or umpire to extend the time and do not affect the jurisdiction of the court or a judge who can, under s. 9 of the Arbitration Act, 1889, extend the time for making an award under this Act, although the time limited by the section has expired (*Knowles & Sons, Limited v. Bolton Corporation*, [1900] 2 Q. B. 253 ; approving *Warburton v. Haslingden Local Board* (1879), 48 L. J. Q. B. 451 ; and over-ruling *In re Mackenzie and Ascot Gas Co.* (1886), 17 Q. B. D. 114).

The time within which the umpire is to make his award is not to be extended beyond two months from the date of the reference to him. There is no provision as to the time within which he is to make the award if not extended by him. By analogy the courts have fixed this original limit at twenty-one days from the date of the reference of the matters to him (*In re Yeadon Local Board and Yeadon Waterworks Co.* (1889), 41 Ch. D. 52). In the same case it was held that the date of the reference to the umpire was to be taken as the date when the arbitrators disagreed and he began to act, and not only from the end of twenty-one days or two months as the case may be. If the award is made after the time it may be set aside.

**Costs.**—(Sub-s. (13).) The arbitrator or umpire, as the case may be, must deal with the costs in his award, otherwise the matter will be remitted to him to do so (*Peake v. Finchley Local Board* (1887), 57 L. T. 882). It is not necessary, however, that he should determine the amount, as the costs are taxable by a taxing master of the High Court upon the application of the successful party (*In re Corporation of Chesterfield and Brampton Local Board* (1886), 50 J. P. 824) ; and an action can be brought for the costs on the award before taxation (*Holdsworth v. Wilson* (1863), 32 L. J. Q. B. 289 ; and see *Metropolitan Rail. Co. v. Sharpe* (1880), 5 App. Cas. 425).

**Sect. 180.****NOTE.**

Arbitrators appointed to assess compensation due by reason of the construction of a sewer have no power to award costs in a case where notice to lay a sewer is given under s. 16 and withdrawn before any works are commenced, as they have no power to award compensation in such a case, and therefore the whole award is invalid (*Davis v. Witney Urban District Council* (1899), 63 J. P. 279); neither have they power to award costs to an unsuccessful claimant (*In re Barnett and the Mayor of Eccles* (1901), 65 J. P. 757).

**Finality of award.**—(Sub-s. (15).) The award is only final on the question of amount and not as to liability, which can be raised in an action on the award, the law being the same as under the Lands Clauses Acts (*Brierley Hill Local Board v. Pearsall* (1884), 9 App. Cas. 595). Awards under this Act are therefore not enforceable under s. 12 of the Arbitration Act, but should be enforced by an action; see *Re Walker and Beckenham Local Board* (1884), 50 L. T. 207.

Claims under twenty pounds may be referred to court of summary jurisdiction.

**181.** All questions referable to arbitration under this Act may, when the amount in dispute is less than twenty pounds, be determined at the option of either party before a court of summary jurisdiction, but the court may, if it thinks fit, require that any work in respect of which the claim of the local authority is made and the particulars of the claim be reported on to them by any competent surveyor, not being the surveyor of the local authority; and the court may determine the amount of costs incurred in that behalf, and by whom such costs or any part of them shall be paid.

It will be seen from s. 308, *post*, that where the amount of compensation claimed does not exceed £20, it may be recovered as well as ascertained by a court of summary jurisdiction. In such a case the justices would determine the liability as well as the amount.

\* \* \* \* \*

Service of notices.

**267.** Notices orders and any other documents required or authorised to be served under this Act may be served by delivering the same to or at the residence of the person to whom they are respectively addressed, or where addressed to the owner or occupier of premises by delivering the same or a true copy thereof to some person on the premises, or if there is no person on the premises who can be so served by fixing the same on some conspicuous part of the premises; they may also be served by post by a prepaid letter, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice order or other document was properly addressed and put into the post.

Any notice by this Act required to be given to the owner

or occupier of any premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given, without further name or description. **Sect. 267.**

The service of the notice to treat is regulated by ss. 19, 20 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 44.

\* \* \* \* \*

**305.** Whenever it becomes necessary for a local authority or any of their officers to enter examine or lay open any lands or premises for the purpose of making plans surveying measuring taking levels making keeping in repair or examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries, and the owner or occupier of such lands or premises refuses to permit the same to be entered upon examined or laid open for the purposes aforesaid or any of them, the local authority may, after written notice to such owner or occupier, apply to a court of summary jurisdiction for an order authorising the local authority to enter examine and lay open the said lands and premises for the purposes aforesaid or any of them. Entry on lands for purposes of Act.

If no sufficient cause is shown against the application the Court may make an order accordingly, and on such order being made the local authority or any of their officers may, at all reasonable times between the hours of nine in the forenoon and six in the afternoon, enter examine or lay open the lands or premises mentioned in such order, for such of the said purposes as are therein specified, without being subject to any action or molestation for so doing: Provided that, except in case of emergency, no entry shall be made or works commenced under this section unless at least twenty-four hours' notice of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered.

The local authority have other powers of entering upon land than those given under this section (see ss. 41, 58, 98, 102). As to where an order of a court of summary jurisdiction is required, see *Lamacraft v. St. Thomas Rural Sanitary Authority* (1880), 42 L. T. (N.S.) 365, and *Consett Urban District Council v. Crawford*, [1903] 2 K. B. 183. Justices have no power to state a case on refusing to make an order under this section (*Diss Urban Sanitary Authority v. Aldrich* (1877), 2 Q. B. D. 179).

As to entry after notice to treat, see ss. 84—91 of the Lands Clauses Consolidation Act, 1845, *ante*, pp 203 *et seq.*

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**308.** Where any person sustains any damage by reason of the exercise of any of the powers of this Act, in relation to any Compensation in case of damage by local authority.

**Sect. 308.** matter as to which he is not himself in default, full compensation shall be made to such person by the local authority exercising such powers ; and any dispute as to the fact of damage or amount of compensation shall be settled by arbitration in manner provided by this Act, or if the compensation claimed does not exceed the sum of twenty pounds, the same may at the option of either party be ascertained by and recovered before a court of summary jurisdiction.

**"Where any person sustains any damage."**—The damage here referred to is actionable damage, as in cases under the Lands Clauses Acts (*Hall v. Mayor of Bristol* (1867), L. R. 2 C. P. 322).

The language of the section is much wider than s. 68 of the Lands Clauses Consolidation Act, 1845, and compensation can be awarded under it for other acts than the injury to land, as, for example, the injury occasioned by the wrongful seizure of meat. See *Re Bater and Mayor of Birkenhead*, [1893] 1 Q. B. 679 ; 2 Q. B. 77. It would seem, therefore, that all damage which a person receives by reason of any act done under this statute, if directly due to that act, will afford a ground for compensation, provided it would have given rise to a cause of action if the statute had not existed. Thus, if surface sewers are made to empty into a stream, and the stream becomes silted up in consequence, compensation may be recovered. See *Durrant v. Branksome Urban District Council*, [1897] 2 Ch. 291, pp. 300, 305. Costs incurred in a successful litigation against a local authority, over and above taxed costs, cannot be recovered (*Barnett v. Eccles Corporation*, [1900] 2 Q. B. 423). When, however, the claim is made by virtue of acts done under ss. 175 and 176, it is presumed that the principles governing compensation will be the same as under the Lands Clauses Acts.

If the powers of the Act are exercised in a negligent manner and damage result, the remedy will be by action, and compensation ought not to be awarded for the damage thereby caused (*Fairbrother v. Bury Rural Sanitary Authority* (1889), 37 W. R. 544 ; *Cor v. Paddington Vestry* (1891), 64 L. T. (N.S.) 566 ; *Uttley v. Local Board of Todmorden* (1874), 44 L. J. C. P. 19 ; *R. v. Darlington Local Board* (1865), 35 L. J. Q. B. 45 ; *Clothier v. Webster* (1862), 31 L. J. C. P. 317 ; *Sanitary Commissioners of Gibraltar v. Orfila* (1890), 15 App. Cas. 400 ; and see an article on the subject at 64 J. P. 131). The fact that a claim for compensation has been made will not estop a person from claiming damages and an injunction in an action, if he is in law entitled to bring such action (*Pentney v. Lynn Commissioners* (1865), 12 L. T. (N.S.) 818). An action will also lie against a local authority for creating a nuisance (*Sellers v. Matlock Bath Local Board* (1885), 14 Q. B. D. 928).

**"Full compensation shall be made."**—The principles of compensation when land is taken will be found in the notes to s. 63 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 96, and in the case of lands injuriously affected in the notes to s. 68, *ante*, p. 115.

It is proposed here to refer merely to those cases where compensation has been awarded in respect of damages caused by the exercise of the powers of sanitary authorities.

**Compensation for land taken.**—Where land is taken the compensation will by s. 176 be determined according to the Lands Clauses Acts.

Where part of an owner's land was taken for sewage works, it was held that he was entitled to recover compensation for the injurious affection of

est of his land by reason of the depreciation caused thereto for building  
uses, by reason of the construction and use of such sewage works  
*per Essex v. Acton Local Board* (1889), 14 App. Cas. 153).

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NOTE.

compensation for injurious affection.—*Sewers*.—By s. 16 local authorities  
allowed to lay and carry sewers under and across any street, road, or  
any lands whatsoever within their district. They have power to do  
upon making compensation, but it is not necessary that they should  
purchase the land. Thus they may carry a sewer across pleasure  
lands belonging to a private individual, and on such a level that the  
bottom of the sewer would only be slightly below the surface, and a per-  
manent embankment would require to be made. They may do so without  
purchase, but they must subsequently make compensation  
*per Merck v. Aston Local Board* (1877), 5 Ch. D. 328). Similarly a local  
authority may make manholes through the land of a private owner without  
purchase, such manholes being part of the sewer  
*per Aston v. Trickenham Local Board* (1879), 11 Ch. D. 838). Compensa-  
tion could probably be claimed for the removal of the subsoil of a road if  
ownership and damage can be proved (*Taylor v. Oldham Corporation*  
1865), 4 Ch. D. 395, *per* JESSEL, M.R., p. 409, and see *Farmer v. Waterloo*  
*City Rail. Co.*, [1895] 1 Ch. 527; *Manmatha Natti Mitter and Another v.*  
*Attorney of State for India* (1897), L. R. 24 Indian Appeals 177; *Leith*  
*Magistrates v. Field* (1878), 6 Ct. of Sess. Cas. 4th ser. 185).

injury to houses by the making of a sewer which would not have given  
to a cause of action gives no right to compensation (*Hall v. Mayor of*  
*Col* (1867), L. R. 2 C. P. 322). But the impossibility of building over  
sewer, the annoyance likely to arise from the opening of manholes, and  
stenches caused thereby, and the possible defective construction of the  
sewer, are subjects which may be properly considered in assessing the com-  
pensation (*Uttley v. Todmorden Local Board* (1874), 44 L. J. C. P. 19).  
The same effect is *President, etc. of Colac v. Summerfield*, [1893]  
187.

Probably also the fact that support adjacent and subjacent is required  
for the sewers should be taken into account in assessing the compensation  
*per Merck v. Aston Local Board* (1877), 5 Ch. D. 328, 333; *In re Corpora-*  
*tion of Dudley* (1881), 8 Q. B. D. 86; and see *Normanton Gas Co. v. Pope*  
1883), 52 L. J. Q. B. 629). In the case of mines, however, see the Public  
Health (Support of Sewers) Act, 1883, *post*. Where a local authority lay  
sewer pipes along a private road, which they may do, under s. 54, if they  
exercise the general control of the streets, they must make compensation to  
the owner (*Hill v. Wallasey Local Board*, [1894] 1 Ch. 133).

The giving of a notice to construct a sewer under s. 16 is probably an act  
giving a person to compensation for any damage suffered, but if the sub-  
sidence is merely of the damage caused by the construction, and the notice  
is withdrawn, no compensation can be awarded to the owner, nor can he be  
deducted costs (*Davis v. Witney Urban District Council* (1899), 63 J. P. 279).  
A owner of land who has acquired the land after a sewer has been laid  
cannot claim compensation (*Helmors v. East Ham Local Board*, Times  
January 13th, 1893; affirmed on appeal February 9th, 1894).

making and altering roads.—Altering the level of streets whereby the  
access to premises is obstructed so that the value of the land is affected  
is a subject for compensation. See *ante*, p. 124.

Thus, if a local authority in paving and levelling a street alter the level  
so that the access to the house is rendered dangerous and difficult, they  
must pay compensation even although the owner may be liable to pay a  
portion of the expenses of such paving and levelling (*R. v. Wallasey*  
*Local Board* (1869), L. R. 4 Q. B. 351; and see *Nutter v. Accrington Local*  
*Board* (1878), 4 Q. B. D. 375). If, however, the alteration in the level of



, and, in the case of the Lands Clauses Consolidation Acts, Sect. 316.  
 1865, 1860, and 1869, any order confirmed by Parliament and  
 authorising the purchase of lands otherwise than by agreement  
 under this Act; the term "the limits of the special Act" means  
 the limits of the district; and the urban or rural authority shall  
 be deemed to be "the promoters of the undertaking," "the com-  
 missioners," or the "undertakers," as the case may be.  
 All penalties incurred under the provisions of any Act incor-  
 porated with this Act shall be recovered and applied in the same  
 manner as penalties incurred under this Act.

332. Nothing in this Act shall be construed to authorise any Saving for  
water rights  
generally.  
 local authority to injuriously affect any reservoir canal river  
 stream or the feeders thereof or the supply quality or fall of  
 water contained in any reservoir canal river stream or in the  
 feeders thereof, in cases where any body of persons or person  
 would, if this Act had not passed, have been entitled by law  
 to prevent or be relieved against the injuriously affecting such  
 reservoir canal river stream feeders or such supply quality or  
 quantity of water, unless the local authority first obtain the consent  
 in writing of the body of persons or person so entitled as  
 aforesaid.

Injurious affection of a canal, river, or stream by a local authority does not  
 give rise to a right to compensation, but the remedy is by injunction and  
 damages (*R. v. Darlington Local Board* (1864), 33 L. J. Q. B. 305; *Roberts v.*  
*Griffiths Rural Council*, [1899] 2 Ch. 608).

# THE TITHE ACT, 1878.

(41 & 42 VICT. c. 42.)

*An Act to amend and further extend the Acts for the commutation of tithes in England and Wales.* [8th August 1878.]

WHEREAS an Act was passed in the session of Parliament held in 6 & 7 Will. 4, the sixth and seventh years of the reign of his late Majesty, King William the Fourth, intituled "An Act for the commutation of tithes in England and Wales," and the said Act has been amended, and the provisions thereof have been extended, by Acts passed in the sessions of Parliament held respectively in the first year, the first and second years, the second and third years, the third year, the fifth and sixth years, the ninth and tenth years, and the twenty-third and twenty-fourth years of the reign of her present Majesty :

7 Will. 4 & 1 Vict. c. 69.  
1 & 2 Vict. c. 64.  
2 & 3 Vict. c. 62.  
3 & 4 Vict. c. 15.  
5 & 6 Vict. c. 54.  
9 & 10 Vict. c. 73.  
23 & 24 Vict. c. 93.

And whereas it is expedient that the said Acts should be amended, and that the provisions thereof should be further extended in manner hereinafter mentioned :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows :

Redemption of tithe on land required for public purposes. 1. In all cases where land charged with rentcharge in lieu of tithes (a) is taken for any of the following purposes ; (that is to say,)

The building of any church, chapel, or other place of public worship ;

The making of any cemetery or other place of burial ;

33 & 34 Vict. c. 75. The erection of any school under the Elementary Education Act (b) ;

The erection of any town hall, court of assize, gaol, lunatic asylum, hospital, or any other building used for public purposes, or in the carrying out of any improvements under the Artizans Dwellings Act, 1875 (c) ;

38 & 39 Vict. c. 36. The formation of any sewage farm under the provisions of the sanitary Acts, or the construction of any sewers or sewage works or any gas or water works ;

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Or the enlarging and improving of the premises or buildings occupied or used for any of the above-mentioned purposes ; the person or persons proposing to carry out the above-mentioned works buildings or improvements shall, as soon as the said person or persons are in possession of the land, and before the land is applied to any of the purposes aforesaid, apply to the Tithe commissioners (d) to order the redemption of the rentcharge for a sum of money equal to twenty-five times the amount thereof ; and the redemption money, with the expenses incident to the redemption, shall be paid to the said commissioners within a time to be fixed by such order, or within any enlarged time the commissioners may appoint, and the commissioners shall apply such redemption money in the manner provided by the said Acts.

(a) By the Tithe Rentcharge Redemption Act, 1885 (48 & 49 Vict. 32), s. 2, the provisions of this and the other recited Acts are extended "all corn rents, rentcharges, and money payments, payable out of or charged on any lands by virtue of any Act of Parliament in lieu of tithes."

(b) For provisions of that Act as to acquisition of land, see *ante*, p. 451.

(c) The Artizans Dwellings Act, 1875, has been repealed, and in effect re-enacted by the Housing of the Working Classes Act, 1890, *post*.

(d) The powers and duties of the commissioners under the Tithe Acts are transferred to the Board of Agriculture by the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), s. 2.

As to compensation for tithes generally, see Lands Clauses Consolidation Act, 1845, s. 68, note, "Tithes," *ante*, p. 128.

2. The application to the said commissioners in respect of any such land may be signed by the secretary of any company which shall have taken the land, or in the case of a corporation, school or other board, by the clerk of the said board or corporation, and in every other case by such person or persons as the commissioners may require.

Application  
for  
redemption.

\* \* \* \* \*

## THE CUSTOMS BUILDINGS ACT, 1879.

(42 & 43 VICT. c. 36.)

*An Act for the transfer of property held for the service of Her Majesty's Customs to the Commissioners of Her Majesty's Works and Public Buildings ; and for other purposes.*

[11th August 1879.]

**Short title.**      **1.** This Act may be cited for all purposes as the Customs Buildings Act, 1879.

**Lands, etc., in Great Britain, the Isle of Man, and the Channel Islands, for service of the customs, to vest in Commissioners of Works, etc.**      **2.** All lands and hereditaments of freehold or leasehold tenure in Great Britain, the Isle of Man, and the Channel Islands, which are now vested in the Secretary to the Commissioners of Her Majesty's Customs (hereinafter called the Commissioners of Customs), or any other person in trust for the same commissioners or for the service of Her Majesty's Customs, shall become and are hereby vested in the Commissioners of Works for the public service, and shall be subject to the provisions of the Commissioners of Works Act, 1852, in all respects as if the same had been acquired under the provisions of that Act.

The Commissioners of Works Act, 1852 (15 & 16 Vict. c. 28), which amended the Crown Lands Act of 1851, constituted "The Commissioners of Her Majesty's Works and Buildings," as a corporation with that name and with a common seal for the purpose of purchasing, holding, and managing lands necessary for the public service. They were not empowered to purchase land compulsorily nor were the Lands Clauses Acts incorporated even in respect of voluntary purchases, but the Commissioners of Public Works Act, 1894 (57 & 58 Vict. c. 23), incorporated the Lands Clauses Acts with the above Act for the purpose of the purchase of land by the commissioners "except the provisions thereof relating to the purchase and taking of land otherwise than by agreement." The Inland Revenue Buildings Act, 1881 (44 & 45 Vict. c. 10), also gives the commissioners power to purchase land voluntarily for the service of the Inland Revenue, and incorporates the Lands Clauses Acts with the same exception. Powers to take land for specific purposes have also been given to the Commissioners of Works from time to time. See, for example, the Public Offices Sites Act, 1882 (45 & 46 Vict. c. 32) ; the Land Registry (New Buildings) Act, 1900. As to the liability of the commissioners to an action for breach of contract, see *Graham & Sons v. Commissioners of Works and Public Buildings*, [1901] 2 K. B. 781.

**Copyholds now vested in customs to remain so, but in trust**      **3.** All lands of copyhold or customary tenure which are now vested in the Secretary to the Commissioners of Customs, or any other person in trust for the same commissioners or for the service of Her Majesty's Customs, shall remain vested in such secretary

any person, but in trust for the Commissioners of Works for public service, and shall be subject to the provisions of the Commissioners of Works Act, 1852, in all respects as if the same had been acquired under the provisions of that Act.

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for Commissioners of Works.

All contracts entered into by or on behalf of the Commissioners of Customs in respect of any lands or hereditaments in Great Britain, the Isle of Man, or the Channel Islands for the service of Her Majesty's Customs, and not at the passing of this Act, fully performed and completed, may be enforced and shall be deemed to have been performed and completed for the public service in like manner as if the Commissioners of Works had been parties thereto and of the Commissioners of Customs.

As to completion of existing contracts.

The Commissioners of Works shall, under and subject to the provisions of the Commissioners of Works Act, 1852, from time to time purchase, hire, or otherwise acquire such buildings, lands, and other hereditaments as may be necessary for the service of Her Majesty's Customs within Great Britain, the Isle of Man, or the Channel Islands; and for the purposes of any such purchase the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation (Scotland) Act, 1845, and the Acts amending the same, respectively, except so much thereof as relates to the purchase and otherwise than by agreement, are hereby incorporated into this Act, the special Act being construed to mean this Act, the promoters of the undertaking being construed to mean the Commissioners of Works.

Commissioners of Works empowered to purchase lands, etc. Incorporation of Lands Clauses Acts. 8 & 9 Vict. c. 18, 19.

The powers and provisions of sections three-hundred and thirty-five to three hundred and forty-one, both inclusive, and of sections three hundred and forty-five of the Customs Consolidation Act, 1853, and of sections two-hundred and seventy-five and two hundred and seventy-six of the Customs Consolidation Act, 1876, shall continue in force as if this Act had not been passed (if the Court shall think fit to exercise the same), except that the provisions referred to in the two hundred and seventy-fifth section of the said Act of 1876, arising from or paid in respect of lands and hereditaments in Great Britain, or the Isle of Man, or the Channel Islands, shall be paid into the Bank of England to the account of the Commissioners of Works instead of to the Commissioners of Customs, and that lands which under the two hundred and seventy-sixth section of the said Act of 1876 would have been vested in Her Majesty, shall vest in like manner in the Commissioners of Works.

Provisions of ss. 335 to 341, both inclusive, and 345 of 16 & 17 Vict. c. 107, and ss. 275 and 276 of 39 & 40 Vict. c. 36, to continue in force with variations.

The sections of the Customs Consolidation Act, 1853, referred to above,

**Sect. 6.****NOTE.**

will be found at p. 390, *ante*. They enable the commissioners to take land compulsorily, and ss. 40—68 of the Lands Clauses Acts are incorporated. See *In re Wood's Estate* (1886), 31 Ch. D. 607.

Sections 275, 276, of the Customs Consolidation Act, 1876, above referred to, are as follows :

**THE CUSTOMS CONSOLIDATION ACT, 1876.**

As to the application of moneys from sale, purchase, or exchange of lands,—

Moneys produced by sale of lands to be paid to the Commissioners of Customs.

**275.** The moneys produced by sales or exchange of any freehold leasehold or copyhold lands or tenements bought sold or disposed of by for or under the direction of the Commissioners of Customs, including the moneys already paid by way of deposit for the purchase of any such lands or tenements already contracted to be sold, and the residue of the moneys to be received in respect or on account of such contract, shall be paid by the purchaser thereof, or by the person making such exchange, to the Commissioners of Customs for the time being or to such person as they shall appoint to receive the same, in trust for her Majesty, for the use of the said customs ; and the receipt of such commissioner or other person as aforesaid for such moneys (such receipt to be endorsed on the conveyance, surrender, or assignment) shall effectually discharge the purchaser or person by whom or on whose account the same shall be paid.

Money for lands of incapacitated persons to be paid into Bank of England.

**276.** In all cases where any money shall have been or shall be agreed, or shall have been or shall be found by the verdict of any jury, to be paid for the use or possession of lands or hereditaments taken by virtue of the Customs Acts belonging to any persons under any disability or incapacity, or not having the absolute interest therein, the same shall be paid by warrant of the Treasury into the Bank of England, in the name and with the privy of the Paymaster-General on behalf of the Chancery Division of the High Court of Justice, to be placed to his account there in the matter of the particular Act to the credit of the persons claiming to be interested therein, naming them pursuant to the method prescribed by any Act in force for the time being for regulating the payment of money into court ; and immediately upon the filing in the Chancery Division of the High Court of Justice of the certificate of such Paymaster-General, with the receipt annexed of the payment into his name as aforesaid of any such money, in conformity with the eighth section of the Queen's Remembrancer Act, 1859, the said lands or hereditaments shall be vested in or to the use of her Majesty.

**7. . . .**

Repealed by the Statute Law Revision Act, 1894.

Act to be registered in Channel Islands.

**8.** This Act shall be registered in the Royal Courts of the Islands of Guernsey and Jersey respectively, and the said Royal Courts respectively shall have full power and authority and are hereby required to register the same.

## THE POST OFFICE (LAND) ACT, 1881.

(44 & 45 VICT. c. 20.)

*Act to amend the Law with respect to the acquisition of land and the execution of instruments for the purposes of the Post Office.* [18th July 1881.]

This Act may be cited as the Post Office (Land) Act, 1881. Short title. This Act shall be deemed to be a Post Office Act within the meaning of the Post Office (Offences) Act, 1837.

The second paragraph which dealt with short titles, and the second section which made this Act come into operation on September 1st, 1881, have been repealed by the Statute Law Revision Act, 1894. By the Short Titles Act, 1896 (59 & 60 Vict. c. 14), this Act is one of the Post Office Acts, 1837—1895. See that Act for the various short titles of the different Post Office Acts. The schedule to this Act, which dealt with short titles, has been repealed also by the Statute Law Revision Act, 1894.

### ACQUISITION OF LAND.

3. [Whereas by the Post Office Duties Act, 1840, the Postmaster-General is constituted a body corporate for the purpose of holding and taking conveyances and leases of lands for the service of the post office, and it is expedient to give further powers for the acquisition of lands: Be it therefore enacted, as follows: (a)]

Power of Postmaster-General for purchase of land. 3 & 4 Vict. c. 96, s. 67.

(1) The Postmaster-General, with the consent of the Treasury, may purchase land for the purpose of the post office, and shall hold and hold such land on behalf of her Majesty for the service of the post office; and for the purposes of this Act the expression "land" shall include any right or easement in, over, or in respect of land.

(2) With respect to any such purchase of land the following provisions shall have effect; (that is to say,)

(a) The Lands Clauses Consolidation Act, 1845, and the Acts 8 & 9 Vict. c. 18. amending the same shall be incorporated with this Act, except the provisions relating to access to the special Act, and in construing those Acts for the purposes of this section "the special Act" shall be construed to mean this Act, and "the promoters of the undertaking" shall be construed to mean the Postmaster-General, and "land" shall be construed to have the same meaning as is given to it by this Act.

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- (b) The bond required by section eighty-five of the Lands Clauses Consolidation Act, 1845 (*b*), shall be under the seal of the Postmaster-General, and shall be sufficient without sureties.
  - (c) The provisions of the said incorporated Acts with respect to the purchase of land compulsorily shall not be put in force until the sanction of Parliament has been obtained in manner in this Act mentioned.
  - (d) Three months at the least before an application is made to Parliament for sanction to the compulsory purchase of land under this Act, the Postmaster-General with the consent of the Treasury shall serve, in manner provided by the said incorporated Acts, a notice on every owner or reputed owner, lessee or reputed lessee, and occupier of any land intended to be so purchased, describing the land intended to be taken, and in general terms the purposes to which it is to be applied, and stating the intention of the Treasury to obtain the sanction of Parliament to the purchase thereof, and inquiring whether the person so served assents or dissents to the taking of his land, and requesting him to forward to the Treasury any objections he may have to his land being taken.
  - (e) The Treasury shall, at some time after the service of such notice, make a local inquiry by a competent officer into the objections made by any persons whose land is required to be taken, and by other persons, if any, interested in the subject matter of such inquiry.
  - (f) The Treasury, if satisfied after such inquiry has been made that the land ought to be taken, may submit a Bill to Parliament containing provisions authorising the Postmaster-General to take such land, and such Bill shall in all respects be deemed to be a public Bill, and, if passed into an Act, to have conveyed the sanction of Parliament to the purchase compulsorily of the land therein mentioned or referred to, and the period for such compulsory purchase shall be three years after the passing of such Act: Provided that if while such Bill is pending in either House of Parliament a petition is presented against anything comprised therein, the Bill may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills.
- (3) The Chancellor and Council for the time being of the Duchy of Lancaster may, if they think fit, from time to time

contract and agree with the Postmaster-General for the sale of, and may absolutely make sale and dispose of, for such sum or sums of money as to the said chancellor and council appear sufficient consideration for the same, any land belonging to her Majesty, in right of the said duchy, which, for the purpose of the post office, the Postmaster-General may from time to time deem it expedient to purchase with the consent of the Treasury, and such land may be granted and assured to the Postmaster-General, and the said moneys shall be paid and dealt with as if the said land had been sold under the authority of the Duchy of Lancaster Lands Act, 1855.

Sect. 3.

18 & 19 Vict.  
c. 58.

(a) The recital has been repealed by the Statute Law Revision Act, 1894.

(b) *Ante*, p. 205.

4. All the provisions of the Post Office Lands Act, 1863, with respect to the sale, exchange, leasing, or surrender of any lands vested in the Postmaster-General shall apply to any land purchased by the Postmaster-General under the powers of this Act.

Power to sell,  
exchange, or  
lease land  
purchased.  
26 & 27 Vict.  
c. 43.

#### EXECUTION OF INSTRUMENTS.

5. Every deed, instrument, receipt, or document made or executed for the purpose of the post office, by, to, or with her Majesty or any officer of the post office, shall be exempt from any stamp duty imposed by any Act, past or future, except where such duty is declared by the deed, instrument, receipt, or document, or some memorandum endorsed thereon, to be payable by some person other than the Postmaster-General, and except so far as any future Act specifically charges the same.

Exemption of  
Postmaster-  
General from  
stamp duty.

The second paragraph has been repealed by the Statute Law Revision Act, 1894.

6. Any person having authority in that behalf, either general or special, under the seal of the Postmaster-General, may, on behalf of the Postmaster-General, give any notice and make any claim, demand, entry, or distress which the Postmaster-General in his corporate capacity or otherwise might give or make, and every such notice, claim, demand, entry, and distress, shall be deemed to have been given and made by the Postmaster-General on behalf of her Majesty.

Power of  
deputy of  
Postmaster-  
General to  
give notice,  
or make  
claim,  
distress, etc.

Section 7, which dealt with the execution of instruments, was repealed by the Post Office (Protection) Act, 1884 (47 & 48 Vict. c. 76), s. 51, and instead it was enacted by s. 15 of that Act as follows:

15. Any instrument requiring to be executed by the Postmaster-General,

**Sect. 6.****NOTE.**

or to which he is a party, may be executed by any of the secretaries of the post office in the name of the Postmaster-General, and, if so executed, shall be deemed to have been executed by the Postmaster-General, and shall have effect accordingly.

Any instrument purporting to be executed by any of the secretaries of the post office in the name of the Postmaster-General, shall, until the contrary is proved, be deemed to have been so executed without proof of the official character of the person appearing to have executed the same.

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**SUPPLEMENTAL.****Definitions.**

**8.** In this Act, unless the context otherwise requires,—

The expression “the purpose of the post office” means any purpose of any of the Post Office Acts or of any Acts for the time being in force relating to post office money orders, post office telegraphs, or post office savings banks, and includes any purpose relating to or in connection with the execution of the duties for the time being undertaken by the Postmaster-General or any of his officers.

1 Vict. c. 36. Other expressions shall have the same meaning as in the Post Office (Offences) Act, 1837.

As to telegraphs, see the Telegraph Act, 1892, *post*, and notes thereto.

Sections 9 and 10 deal with the application of the Act to Scotland and Ireland respectively.

## THE METROPOLITAN OPEN SPACES ACT, 1881.

(44 & 45 VICT. c. 34.)

*An Act to amend the Metropolitan Open Spaces Act, 1877.*

[11th August 1881.]

The principal provisions of this Act and of the Metropolitan Open Spaces Act, 1877, as amended by this Act, are by the Open Spaces Act, 1887, extended to every urban sanitary district, and to any rural sanitary district in respect of which the sanitary authority shall have been invested by an order of the Local Government Board, with the powers of the Open Spaces Act, 1877. The Act of 1877 thus extended enables such local authorities to acquire land voluntarily for the exercise and recreation of the public.

The Act of 1881 enables trustees holding land under a private or local Act of Parliament, for the purposes of a garden or open space, to convey the same to the local authority to be held as an open space, with the consent of two-thirds of the owners and occupiers of any houses fronting upon or abutting on such open space, and who are present at a meeting to be held for the purpose. It may be conveyed for valuable or nominal consideration, or as a free gift (s. 2). The owner of any open space, subject to rights reserved for exercise and recreation, may, with the consent of two-thirds of the persons interested and present at a meeting held for the purpose, convey to or grant an easement to or enter into an agreement with the local authority in respect thereof, so that it may be used as a public open space (s. 3). Disused burial grounds may also be transferred to the local authority for a similar purpose, who may lay them out and manage them. In such a case such management and control must be previously authorised by a faculty of the bishop of the diocese (ss 4, 5).

The Open Spaces Act, 1890 (53 & 54 Vict. c. 15), further enables trustees holding land in trust for the purposes of public recreation, other than under an Act of Parliament, or for any charitable purpose, with the consent of the local authority and upon certain conditions, to transfer the same to the local authority.

These local authorities are now district councils under the Local Government Act, 1894.

An open space means any land either within or without or partly within or without the district of a local authority, of which not more than a twentieth part is covered with buildings, and which is laid out as a garden or reserved for purposes of recreation, or lies waste and unoccupied.

As regards compensation for any interests taken away under these Acts it is provided by this Act as follows :

9. No estate, interest, or right of a profitable or beneficial Provision for  
nature in, over, or affecting an open space, churchyard, cemetery, compen-  
burial ground shall, except with the consent of the body or sation.  
person entitled thereto, be taken away or injuriously affected by

**Sect. 9.**8 & 9 Vict.  
c. 18.

anything done under this Act without compensation being made for the same ; and such compensation shall be paid by the metropolitan board, (a) vestry, or district board by which such estate, interest, or right is taken away or injuriously affected, and shall, in case of difference, be ascertained and provided in the same manner as if the same compensation were for the compulsory purchase and taking or the injurious affecting of lands under the provisions of the Lands Clauses Consolidation Act, 1845, and any Acts amending the same.

(a) By the Open Spaces Act, 1887, s. 5, as regards sanitary authorities outside London having powers under these Acts, the powers of the Metropolitan Board are to be enjoyed by such sanitary authorities, and the words "metropolitan board" shall be used in such case as if they meant the sanitary authority of the district. As to the extension of this Act to county and parish councils, see the Commons Act, 1899 (62 & 63 Vict. c. 30, s. 17).

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## THE COMMONABLE RIGHTS COMPENSATION ACT, 1882.

(45 & 46 VICT. c. 15.)

*Act to provide for the better application of moneys paid by way of compensation for the compulsory acquisition of common lands and extinguishment of rights of common.*

[19th June 1882.]

*Whereas under the provisions of the Lands Clauses Consolidation Act, 1845, and of railway and other special Acts of Parliament, money is directed or authorised to be paid to a committee as compensation for the extinction of commonable rights or for lands, being common lands or in the nature thereof, the right to the soil of which belongs to the commoners :*

*And by the Lands Clauses Consolidation Act, 1845 (a), and by the Inclosure Act, 1852 (b), and the Inclosure Act, 1854 (c), certain powers of apportioning and otherwise dealing with such money are conferred upon any such committee and upon the Inclosure Commissioners for England and Wales (hereinafter called the commissioners), but such powers are found in practice to be insufficient, and money paid by way of compensation as aforesaid is often in consequence useless to the persons interested therein :*

*And whereas it is expedient to give such powers of dealing with such compensation money as are hereinafter specified, but such powers cannot be conferred without the sanction of Parliament (d).]*

(a) *Ante*, p. 232.

(b) *Ante*, p. 388.

(c) *Ante*, p. 396.

(d) The preamble was repealed by the Statute Law Revision Act, 1898.

1. This Act may be cited as the Commonable Rights Compensation Act, 1882. Short title.

2.—(1) With respect to any money which has been or hereafter may be paid by any railway or other public company or corporate body or otherwise under the provisions of the Lands Clauses Act and any Act incorporated therewith, or of any other Act of Parliament to a committee of commoners as compensation for the extinguishment of commonable or other rights or for lands being Application of compensation money for common lands.

**Sect. 2.**

common lands or in the nature thereof the right to the soil of which may belong to the commoners, the committee (or a majority in number thereof) or, after the expiration of twelve months from the payment of such money to the committee, any three of the persons claiming to be interested in such money may make application in writing to the commissioners to call a meeting of the persons interested in such money to consider the application thereof, and the commissioners shall call a meeting accordingly, and at such meeting the majority in number and the majority in respect of interest of the persons present may decide by resolution that such money shall be applied and laid out in one or more of the following ways :

- (a) In the improvement of the remainder of the common land in respect of a portion of which such money has been paid ;
- (b) In defraying the expense of any proceedings under the Metropolitan Commons Acts or under the Inclosure Acts, 1845 to 1878, with reference to a scheme for the local management, or a provisional order for the regulation, of such common land, or of any application to Parliament for a private bill or otherwise for the preservation and management of such common land as an open space ;
- (c) In defraying the expense of any legal proceedings for the protection of such common land, or the commoners' rights over the same ;
- (d) In the purchase of additional land to be used as common land ;
- (e) In the purchase of land to be used as a recreation ground for the neighbourhood ;

and any such resolution shall bind the minority and all absent parties, and the commissioners shall make an order under their seal for the payment to them of any expenses incurred by them in relation to the matter, and (subject to such payment) for the application of the money according to such resolution, and the committee or the persons in whose names such money stands or is invested, or the survivors or survivor in account of such persons or the legal personal representative of such survivor shall, upon service of any such order of the commissioners as aforesaid upon them or any of them or any person on their behalf as the commissioners may direct, pay and apply the said money or realise any security in which the same is invested, and pay and apply the proceeds thereof in manner directed by the said order.

Sect. 2.

(2) Any land so purchased as aforesaid for use as common shall be conveyed to and vest in trustees upon trusts for the persons interested, such trustees to be appointed, and such trusts and the powers and duties of the trustees, and provisions for the appointment of new trustees from time to time to be declared and provided by an order under the seal of the commissioners, pursuant to resolutions to be passed at a special meeting of the persons interested, convened by the said commissioners by such majorities as aforesaid.

(3) Every appointment of a new trustee or of new trustees, in pursuance of this Act, shall be subject to confirmation by the commissioners under their seal, and upon such confirmation the land shall vest in the remaining and the newly appointed trustees without any conveyance.

(4) The commissioners shall publish such notice of any meeting held under this Act, and frame such rules and give such directions for the conduct of such meetings and the service of orders made thereunder under this Act as they may deem fit, and may, if they think fit, direct an assistant commissioner appointed by them to preside at any such meeting, and any such meeting may be adjourned from time to time.

(5) Any land so purchased as aforesaid for use as a recreation ground shall be conveyed to and vest in the local authority as specified in the schedule to this Act for the district within which such land is situate, and shall be held and managed by such local authority, subject to and in accordance with the provisions relating to recreation grounds respectively contained in the Inclosure Acts, 1845 to 1878.

3. Any moneys heretofore paid or hereafter to be paid by any railway or other public company or body corporate or otherwise under the provisions of the Lands Clauses Act, 1845, and any Act incorporated therewith, or of any other Act of Parliament, to any local authority as specified in the schedule to this Act, or to the churchwardens and overseers of a parish in respect of any recreation ground or allotment for field gardens taken under the powers of any such Act or Acts of Parliament shall be applied in the manner provided by the Inclosure Acts, 1845 to 1878, as amended by the Commons Act, 1879, with respect to the surplus rents arising from recreation grounds and field gardens respectively.

Application of compensation money for recreation grounds and field gardens.

42 & 43 Vict. c. 37.

4. In any case where money paid by way of compensation as aforesaid has, before the passing of this Act, been applied in any

Provision for cases where money paid

**Sect. 4.** **by way of compensation has already been applied in the manner authorised by this Act.** one or more of the ways authorised by this Act, a resolution may be passed, at any meeting of the persons interested, called by the commissioners in manner provided by this Act, by such majorities as aforesaid approving of such application, and such application shall, upon the allowance of such resolution by the commissioners under their seal, be deemed to have been lawfully made under the provisions of this Act; and the committee or other persons by whom such money has been so applied shall thereupon be discharged from all liability in respect of such money so applied. And the provisions of this Act contained with respect to the declaration of trusts, and the powers and duties of trustees, and the appointment of new trustees, from time to time, shall apply in every case in which such money has, before the passing of this Act, been laid out in the purchase of land.

**Deposit of orders.**

**5.** Copies of all orders made by the commissioners under this Act shall be deposited and kept in like manner as copies of an award are by the Inclosure Act, 1845, directed to be deposited and kept.

**Exception of the New Forest.**

**6.** This Act shall not extend to the New Forest.

### SCHEDULE.

Situation of Land.	Local Authority.
Within the Metropolis - - - -	The Metropolitan Board of Works.
Not within the Metropolis, but within the district of an urban sanitary authority, as defined by the Public Health Act, 1875, or any Act amending the same.	The urban sanitary authority.
Elsewhere than within the Metropolis or the district of an urban sanitary authority as above defined.	The churchwardens and overseers of the parish.

## THE ELECTRIC LIGHTING ACT, 1882.

(45 & 46 VICT. c. 56.)

*An Act to facilitate and regulate the supply of electricity for lighting and other purposes in Great Britain and Ireland.*

[18th August 1882.]

It is enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as the Electric Lighting Act, 1882.

2. The provisions of this Act shall apply to every local authority, company, or person who may by this Act or any license or provisional order granted under this Act, or by any special Act to be hereafter passed, be authorised to supply electricity within any area (in this Act referred to as "the undertakers") and to every undertaking so authorised, except so far as may be expressly provided by any such special Act ; and every such license, provisional order, and special Act, is in this Act included in the expression "license, order, or special Act."

This Act has been by the Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), and the two Acts are to be read together as one Act.

By these Acts local authorities, companies, or persons may be authorised to supply electricity and to construct the necessary works for so doing. They may be authorised, subject to certain consents, by license of the Board of Trade (s. 3 of 1882 Act), by provisional order confirmed by Act of Parliament (s. 4 of 1882 Act), or by special Act.

Section 10 enables lands to be purchased and the works to be constructed. There is no power, however, to take lands compulsorily. Compensation for any damage done is given by s. 17 of this Act.

The Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), incorporates in one Act certain provisions usually contained in provisional orders made under the Electric Lighting Acts, 1882—1888, and these clauses will apply to such provisional orders and also to special Acts dealing with electric lighting, unless expressly varied. Under certain of these clauses compensation is to be paid for default in complying with the provisions of these clauses. See ss. 14, 15, 17, 18, 20.

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**Sect. 10.** 10. The undertakers may, subject to and in accordance with the provisions and restrictions of this Act, and of any rules made by the Board of Trade in pursuance of this Act and of any license, order, or special Act authorising or affecting their undertaking, and for the purpose of supplying electricity, acquire such lands by agreement, construct such works, acquire such licenses for the use of any patented or protected processes, inventions, machinery, apparatus, methods, materials, or other things, enter into such contracts, and generally do all such acts and things as may be necessary and incidental to such supply.

General powers of undertakers under license or provisional order.

As to making compensation, see s. 17, *infra*, and note thereto.

For further provisions as to works, see ss. 11—20 of the Electric Lighting (Clauses) Act, 1899.

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Incorporation of certain provisions of Clauses Consolidation Acts.

12. The provisions of the following Acts shall be incorporated with this Act ; that is to say,

- (1) The Lands Clauses Acts, except the enactments with respect to the purchase and taking of lands otherwise than by agreement, and except the enactments with respect to the entry upon lands by the promoters of the undertaking ; and
- (2) The provisions of the Gasworks Clauses Act, 1847, (a) with respect to breaking up streets for the purpose of laying pipes, and with respect to waste or misuse of the gas or injury to the pipes and other works, except so much thereof as relates to the use of any burner other than such as has been provided or approved of by the undertakers ; and
- (3) Sections thirty-eight to forty-two inclusive, and sections forty-five and forty-six, of the Gasworks Clauses Act, 1871.

10 & 11 Vict. c. 15.

34 & 35 Vict. c. 41.

For the purposes of this Act, in the construction of all the enactments incorporated by this section “the special Act” means this Act inclusive of any license, order, or special Act ; and the “promoters” or “undertakers,” and “the undertaking,” as the case may be, mean the undertakers and the undertaking respectively under this Act.

In the construction of the said Lands Clauses Acts, “land” includes easements in or relating to lands.

In the construction of the said Gasworks Clauses Act, 1847, and the Gasworks Clauses Act, 1871, the said Acts shall be construed as if “gas” meant “electricity,”

and as if "pipe" meant electric line, and "works" meant "works" as defined by this Act, and as if "the limits of the special Act" meant the area within which the undertakers are authorised to supply electricity under any license, order, or special Act. Sect. 12.

all offences, forfeitures, penalties, and damages under the said incorporated provisions of the said Acts or any of them may be executed and may be recovered in manner by the said Acts respectively enacted in relation thereto, provided that sums recoverable under the provisions of section forty of the Gasworks Clauses Act, 1871, shall not be recovered as penalties, but may be recovered summarily as civil debts.

Under s. 6 of the Gasworks Clauses Act, 1847, compensation must be made for breaking up the streets, and private property must not be entered. See note to the Gas and Water Facilities Act, 1870, *ante*, p. 449. As to mines below the streets, see s. 33, *infra*, p. 491. The Electric Lighting (Clauses) Act, 1899, embodies this section, and the incorporated sections. See s. 11 and Appendix.

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3. If at any time after the undertakers have placed any works under, in, upon, over, along or across any canal, any person claiming power to construct docks, basins or other works upon any land adjoining to or near such canal, constructs any dock, basin or other work on such land, but is prevented by the works of the undertakers from forming a communication for the convenient passage of vessels with or without masts between such dock, basin or other work, and such canal; or if the business of such dock, basin or other work is interfered with by reason or in consequence of any such works of the undertakers, then the undertakers at the request of such person, and on having reasonable facilities afforded to him by him for placing works round such dock, basin or other work, under, in, upon, over, along or across land belonging to or under his control, shall remove and place their work accordingly. If any dispute arises between the undertakers and such person as to the facilities to be afforded to the undertakers, or as to the location in which the works are to be placed, it shall be determined by arbitration.

Clause for  
protection of  
canals.

to arbitration, see s. 28.

7. In the exercise of the powers in relation to the execution of works given them under this Act, or any license, order, or special Act, the undertakers shall cause as little detriment and

Compensa-  
tion for  
damage.

**Sect. 17.** inconvenience and do as little damage as may be, and shall make full compensation to all bodies and persons interested for all damage sustained by them by reason or in consequence of the exercise of such powers, the amount and application of such compensation in case of difference to be determined by arbitration.

The compensation here referred to is in respect of the execution of the works. Section 10, read in conjunction with the interpretation section (32), is confined to construction of the works required to supply electricity, and does not apply to their subsequent user. Section 17 does not apply to damages caused by the use of the works (*Shelfer v. City of London Electric Lighting Co. and Meur's Brewery Co. v. Same*, [1895] 1 Ch. 287, p. 320, and see [1895] 2 Ch. 388).

Undertakers of electrical works are not authorised by these sections, apart from any provisions of the provisional order, to create a nuisance. Such works are distinct from railways which are constructed within a definite line of operations within which a railway company can make its works, and if a nuisance is created, notwithstanding reasonable care, it is to be taken as sanctioned by the legislature. There is no such limit in these cases, and if a nuisance is created the undertakers are liable to be restrained by injunction, and the payment of damages is not a sufficient remedy. *S.C.*, and see *Attorney-General v. Gas Light and Coke Co.* (1877), 7 Ch. D. 217; *Attorney-General v. Leeds Corporation* (1881), 5 Ch. 583; *Metropolitan Asylum District Board v. Hill* (1881), 6 App. Cas. 193; *National Telephone Co. v. Baker*, [1893] 2 Ch. 186; *Jordeson v. Sutton Southcotes and Drypool Gas Co.*, [1899] 2 Ch. 217.

\* \* \* \* \*

**Arbitration.** **28.** Where any matter is by this Act, or any license, order, or special Act, directed to be determined by arbitration, such matter shall, except as otherwise expressly provided, be determined by an engineer or other fit person to be nominated as arbitrator by the Board of Trade on the application of either party, and the expenses of the arbitration shall be borne and paid as the arbitrator directs.

Any license or provisional order granted under this Act shall be deemed to be a special Act within the meaning of the Board of

37 & 38 Vict. Trade Arbitrations, etc. Act, 1874.  
c. 40.

\* \* \* \* \*

**Interpreta-  
tion.**

**32.** In this Act, unless the context otherwise requires—

The expression “electricity” means electricity, electric current, or any like agency :

The expression “electric line” means a wire or wires, conductor, or other means used for the purpose of conveying, transmitting, or distributing electricity with any casing, coating, covering, tube, pipe, or insulator enclosing, surrounding, or supporting the same, or any part thereof, or any apparatus connected therewith for the purpose of conveying, transmitting, or distributing electricity or electric currents :

- The expression "works" means and includes electric lines, also any buildings, machinery, engines, works, matters, or things of whatever description required to supply electricity and to carry into effect the object of the undertakers under this Act : Sect. 32.
- The expression "company" means any body of persons corporate or unincorporate :
- The expression "Lands Clauses Acts" means the Lands Clauses Consolidation Acts, 1845, 1860, and 1869 : 8 & 9 Vict.  
c. 18.  
23 & 24 Vict.
- The expression "street" includes any square, court, or alley, highway, lane, road, thoroughfare, or public passage, or place, within the area in which the undertakers are authorised to supply electricity by this Act or any license, order, or special Act : c. 106.  
32 & 33 Vict.  
c. 18.
- The expression "telegram" has the same meaning as in the Telegraph Act, 1869. 32 & 33 Vict.  
c. 73.

**33.** Nothing in this Act shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any electric line shall be laid to work such mines and minerals. For the  
protection  
of mines.

It would therefore appear that mine-owners will not be liable in respect of any damage caused to the lines by working any mines that may lie under them. In respect of gas pipes, they have been held liable for such damage. See *Normanton Gas Co. v. Pope* (1883), 52 L. J. Q. B. 629, and note to the Gas and Water Facilities Act, 1870, *ante*, p. 449. In respect of a local authority carrying out the works, the Public Health (Support of Sewers) Act, 1883, *post*, p. 493, may possibly apply unless the provision in s. 5 excludes this section.

\* \* \* \* \*

THE LANDS CLAUSES (UMPIRE) ACT, 1883.  
(46 & 47 VICT. c. 15.)

*An Act to amend the Lands Clauses Consolidation Act, 1845.*

[18th June 1883.]

Amendment  
of s. 28 of  
8 Vict. c. 18  
extending  
the power of  
appointment  
of umpire by  
Board of  
Trade.

1. Section twenty-eight of the Lands Clauses Consolidation Act, 1845, shall be read and have effect as follows :

28. If in either of the cases aforesaid the said arbitrators shall refuse or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

This section is printed as amended by the Statute Law Revision Act, 1898.

See notes to s. 28 of the Lands Clauses Consolidation Act, 1845.

Short title.

2. This Act may be cited as the Lands Clauses (Umpire) Act, 1883.

By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 23, in any Act passed after January 1st, 1890, unless the contrary intention appears, "the expression 'Lands Clauses Acts' shall mean as respects England and Wales, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Amendment Act, 1860, the Lands Clauses Consolidation Act, 1869, and the Lands Clauses (Umpire) Act, 1883, and any Acts for the time being in force amending the same." There is one other such Act—the Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11).

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THE PUBLIC HEALTH ACT, 1875, (SUPPORT  
OF SEWERS,) AMENDMENT ACT, 1883.

(46 & 47 VICT. c. 37.)

*An Act to amend the Public Health Act, 1875, and to make provision with respect to the support of public sewers and sewage works in mining districts.* [25th August 1883.]

Enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Public Health Act, 1875, (Support of Sewers,) Amendment Act, 1883, and shall be construed as one with the Public Health Act, 1875, (in this Act called the principal Act,) as amended by the Acts for the time being in force amending the same.

2. In this Act,—

The expression “sanitary work” means any existing or future building or work constructed by or vested in or under the control of a local authority under the powers or for the purposes of so much of the principal Act or of any general or local Act or provisional order as relates to the construction or maintenance of any works of sewerage, drainage, sewage disposal, lighting, or water supply, and includes any fixtures, pipes, fittings, or apparatus connected with any such work, and belonging to or used by the local authority :

Interpretation.

The expression “support” includes vertical and lateral support :

The expression “Sanitary Act” means the Act or provisional order under the authority of which a sanitary work has been or is constructed or is maintained, whether such Act or order has passed and confirmed before or after the commencement of this Act :

The expression “person” includes a body corporate.

3. The provisions of the Waterworks Clauses Act, 1847, sections eighteen to twenty-seven (both inclusive), with respect to mines, shall, in relation to any sanitary work of a local authority, be construed as if they were contained in the Waterworks Clauses Act, 1847.

**Sect. 3.**  
 10 & 11 Vict.  
 c. 17, with  
 respect to  
 mines, to  
 sanitary  
 works over  
 mines.

be deemed to be incorporated with this Act and with the sanitary Act under the authority of which such sanitary work has been or is constructed or is maintained, with the following modifications (that is to say) :

- (1) For the purposes of such incorporation the said provisions of the Waterworks Clauses Act, 1847, shall be construed as if the expression "the undertakers" referred to the local authority, and as if the expression "the special Act" referred to such sanitary Act and this Act, and as if expressions relating to pipes, conduits, or other works referred to the sanitary work :
- (2) The local authority, by or with any notice under the Waterworks Clauses Act, 1847, of willingness to treat for or make compensation, or of intention to prevent or interfere with the working of any mines, may specify and define the nature and extent of support which they require to be left, and any such notice may extend to minerals beyond the distance of forty yards mentioned in the said Act or to such less distance as the local authority think fit :
- (3) As regards sanitary works existing at the passing of this Act the local authority shall cause the survey and map referred to in section nineteen of the Waterworks Clauses Act, 1847, to be made within twelve months after the passing of this Act :
- (4) The amount of any compensation in respect of support for a sanitary work payable by a local authority under the provisions of the Waterworks Clauses Act, 1847, as incorporated with this Act or the sanitary Act, together with the costs of and incident to settling the same by arbitration or otherwise, shall be paid, charged, and borne in the same manner, and subject to the same powers and provisions as to borrowing and otherwise, as is provided with respect to the expenses of the construction or maintenance of the sanitary work by the sanitary Act :
- (5) A local authority may from time to time make agreements with the owners, lessees, or occupiers of or the persons working any mine for compromising any claim made or to be made in respect of anything done or omitted before the passing of this Act in relation to the matters in this Act mentioned or otherwise for carrying into effect the purposes of this Act in relation to the past or future working of mines.

the provisions of this Act shall apply to every sanitary work as defined in this Act, whether the land on, in, over, or under which the work is situate is or is not vested in or occupied by the local authority, and is or is not wholly or partially dedicated to the public as a street, highway, or public place.

### Sect. 3.

The provisions of the Waterworks Clauses Act, 1847, referred to in this Act, will be found at pp. 358—363, *ante*. They are in many respects similar to the mining sections in the Railways Clauses Act, 1845, ss. 77—85, pp. 328 *et seq.*, in the notes to which will be found the cases in respect of mines under public undertakings.

**Support.**—It is to be noticed that this Act only deals with support for sanitary work from mines. The general law of support is left untouched. There are no statutory provisions regulating the support that is to be given for sewers and pipes by land in which there are no mines.

The general law will therefore apply. It should be noticed that the legislature, in enabling local authorities to lay pipes and sewers, enables them thereby to acquire a corporeal interest in land and not merely an easement. They acquire the stratum occupied by the sewer or pipe. To the stratum the natural right of support subjacent and adjacent appertains. An additional burden is imposed upon the land subjacent or adjacent by the weight of the sewer, the right to impose this additional burden upon the land could only be acquired by grant or prescription, unless given by statute. Section 308 of the Public Health Act, 1875, provides that compensation shall be made for all injury done in carrying out the purposes of the Act. If a sewer is to be made over private land the stratum need not be previously purchased; but the owner will be entitled to be compensated for the stratum taken and all other damage, including the burden of requiring additional support (*Roderick v. Aston Local Board* (1877), 5 Ch. D. 419; *Thornton v. Nutter* (1867), 31 J. P. 419; *Taylor v. Corporation of Northampton* (1876), 4 Ch. D. 395; and see *North London Rail. Co. v. Metropolitan Board of Works* (1859), 10 J. 405).

Questions have arisen under various statutes as to whether the particular statute imposed the burden of supporting this additional weight upon the landowner. It has been decided as regards the Public Health Act, 1875, that no additional burden is imposed by the legislature. The point was fully discussed and decided in the case of *In re Corporation of Dudley* (1881), 8 Q. B. D. 86, in which was a case in regard to mines, and was decided immediately before the passing of this Act. According to that case the general rule is, that where the legislature gives power to a public body to do anything of a public character, the legislature means also to give to the public body all the land, without which the power would become wholly unavailable, although no additional meaning cannot be implied in relation to circumstances arising incidentally only. The legislature, therefore, in requiring the local authorities to make and maintain sewers, by necessary implication confers upon them that right of support which under ordinary circumstances is necessary. The landowner has the obligation imposed upon him to leave sufficient earth to support the additional burden, if any, which the sewer may cause.

The same principle has been followed in respect of gas-pipes laid down under an Act incorporating the Gasworks Clauses Acts. See *Normanton Gas Co. v. Pope* (1883), 49 L. T. (N.S.) 798.

In such cases the landowner must not do any act to interfere with the support; but he will be entitled to compensation, to be assessed at one time, for prospective as well as actual injury.

In the case of the *Metropolitan Board of Works v. Metropolitan Rail. Co.* (1869), L. R. 4 C. P. 192, where a sewer was injured by excavating adjoining land, it was held, in the absence of any compensation clause, that

**Sect. 3.****NOTE.**

the legislature could not have intended this burden to have been placed upon the adjoining land, and that the local authority had, therefore, no right of support to the sewer.

If an Act confers power to make and maintain something requiring support, the statute, in the absence of controlling context, must be taken to confer the right of support; but if the Act does not give the landowner compensation for the burden imposed, this is a strong argument that the legislature did not intend to confer the right to support. On the other hand, if compensation can be obtained, it needs a strong context to show that the right to support is not given (*London and North Western Rail. Co. v. Evans*, [1893] 1 Ch. 16). For the general principle of construction, see *Western Counties Rail. Co. v. Windsor and Annapolis Rail. Co.* (1882), 7 App. Cas. 178, and *Commissioners of Public Works (Cape Colony) v. Logan*, [1903] A. C. 355.

**"Shall apply to every sanitary work."**—The definition of sanitary work in s. 2 should be noted, as the heading of this Act is somewhat misleading. It applies to works for lighting and water supply as well as to works connected with sewers. In view of the saving, in s. 5, of express enactments, it seems doubtful whether this Act extends to works for electric lighting. See s. 33 of the Electric Lighting Act, 1882, *ante*, p. 191.

Limitation  
of right to  
support  
for sanitary  
works over  
mines.

**4.** Except as in this Act provided, a local authority shall not by reason only of anything contained in the sanitary Act under the authority of which a sanitary work has been or is constructed or maintained be deemed to have acquired or to be entitled to or to be bound to acquire or make compensation for any right of support for such sanitary work as against any person owning or working or being lessee or occupier of or entitled to work or otherwise interested in any mine; and nothing in such sanitary Act shall be deemed to have subjected or to subject any such person to any liability to the local authority in respect of damage to a sanitary work caused in or consequent upon the working of any mines in a reasonable and proper manner.

Savings.

**5.** Nothing in this Act shall be construed to repeal, invalidate, or affect any express enactment in a sanitary or other Act with respect to rights of support for sanitary works, or any agreement made before the passing of this Act with respect to such rights, or to affect any action, arbitration, or other legal proceeding concluded before or pending at the passing of this Act.

Where any right of support has been acquired before the passing of this Act by a local authority in respect of any sanitary work, and no compensation is at the passing of this Act recoverable in respect of such right, nothing in this Act shall be construed to apply to the work in respect of which such right has been acquired, or operate to deprive the local authority of such right or to entitle any person to any compensation in respect thereof, to which such person would not have been entitled if this Act had not been passed.

## THE PRISON ACT, 1884.

(47 & 48 VICT. c. 51.)

*Act to remove doubts as to the powers of the Secretary of State in relation to the altering, enlarging, rebuilding, and building of prisons, and appropriating any building for a prison.*

[7th August 1884.]

*Whereas under the Prison Act, 1865, every prison authority had power to alter, enlarge, or rebuild any of its prisons, and to build or prisons in lieu of or in addition to any subsisting prisons, the necessity so to do was shown, and the approval of the Secretary of State obtained, and the other conditions complied with, and doubts have arisen as to whether the Prison Act, 1877, enables the Secretary of State to exercise the said power, and it is expedient to remove such doubts :]*

The preamble was repealed by the Statute Law Revision Act, 1898 (61 & 62 Vict. c. 51).

1. This Act shall be construed as one with the Prison Act, 1877. Construction and short title.

This Act may be cited as the Prison Act, 1884, and this Act and the Prison Act, 1877, may be cited together as the Prison Acts, 1877 and 1884.

2.—(1) The Secretary of State, with the approval of the Treasury, may alter, enlarge, or rebuild any prison, and build any new prison which appears to be necessary, and for that purpose shall have all the powers conferred by the Prison Act, 1865, and the like purpose on a prison authority who had obtained the sanction of a Secretary of State. Explanation as to power of Secretary of State to enlarge and build new prisons.

(2) The Secretary of State, in lieu of building, may by such declaration as hereinafter mentioned, appropriate as a prison any suitable building or part of a building vested in him or under his control, including any prison for convicts under the superintendence of the directors of convict prisons which is situate in England.

(3) The Secretary of State may from time to time declare that any building or part of a building built for or appropriated as a prison in pursuance of this Act shall, and the same accordingly

**Sect. 2.**

shall, be a prison under the Prison Act, 1865, and the Prison Act, 1877, and be within the jurisdiction of the Prison Commissioners, and be a prison for the county and prison jurisdiction named in the declaration ; such declaration may be at any time revoked by the Secretary of State, but while in force shall have full effect.

Provided that nothing in any such declaration shall alter the legal estate in any building. . . .

Sub-sections (4) and (5) were repealed by the Statute Law Revision Act, 1898.

By the Prison Act, 1865 (28 & 29 Vict. c. 126), the prison authorities who were usually either the local justices or municipal council, were required to provide prison accommodation. By the Prison Act, 1877, the prisons were vested in prison commissioners who act under the Secretary of State, and the prison authorities were no longer required to provide prisons (ss. 6, 16, 48).

By the Prison Act of 1865, as mentioned in the above recital, prison authorities had power to alter, enlarge, and rebuild prisons or to build new ones (s. 23), and they had power to take land for this purpose. In the Prison Act, 1877, provisions were omitted to enable the Secretary of State to exercise these powers. After the prison authorities had obtained the sanction of the Secretary of State they had power to take land compulsorily for enlarging a prison or making it more commodious or safe. For new prisons they could only take land by agreement. As to how far these provisions are applicable to State inebriate reformatories, see the Inebriates Act, 1898 (61 & 62 Vict. c. 60), ss. 3, 4. The following are the provisions :

#### THE PRISON ACT, 1865.

Certain  
provisions of  
8 & 9 Vict.  
c. 18  
incorporated.

44. Any prison authority may purchase and hold such lands or easements relating to lands as they may require for the purposes of this Act ; and to facilitate such purposes the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, shall be incorporated with this Act, with the exceptions and subject to the conditions hereinafter contained ; that is to say,

- (1) There shall not be incorporated with this Act the sections and provisions of the Lands Clauses Consolidation Act, 1845, hereinafter mentioned ; that is to say, section sixteen, whereby it is provided that the capital is to be subscribed before the compulsory powers are to be put in force ; section seventeen, whereby it is provided that the certificate of the justices shall be evidence that the capital has been subscribed ; the provisions relating to the entry upon lands by the promoters of the undertaking contained in sections eighty-four to ninety-one, both inclusive ; section one hundred and twenty-three, whereby a limit of time for the compulsory purchase of land is imposed ; or the provisions relating to access to the special Act :
- (2) In the construction of this Act and the said incorporated Acts, this Act shall be deemed to be the special Act, and the prison authority shall be deemed to be the promoters of the undertaking, and the word "lands" shall include any easement in or out of lands :
- (3) The prison authority shall not, except in respect of lands contiguous to a prison, and required for the purpose of enlarging a prison or

rendering it more commodious or safe, put in force the provisions of the said incorporated Acts with respect to the purchase of land otherwise than by agreement.

## Sect. 2.

5. When any lands have been purchased for the purposes of a prison in Confirmation  
 suance of this Act, such lands shall, at the expiration of five years from of title to  
 date of a conveyance having been made to any person or body corporate lands pur-  
 trust for such purposes, absolutely vest in that person or body corporate chased for  
 all the estate or interest purported to be conveyed, to be held on trust purpose of  
 the aforesaid purposes ; and if before the expiration of the said term of prison.  
 years any proceedings are taken on which judgment is obtained for the  
 recovery of the possession of the said lands, then within two calendar  
 months after judgment has been obtained there shall be paid to the person  
 obtaining such judgment, instead of the delivery of possession of the lands,  
 costs incurred in obtaining such judgment, and compensation for the full  
 value of his estate or interest in such lands, the amount of such compensa-  
 tion to be ascertained in manner provided by the said Lands Clauses  
 Consolidation Act, 1845, in case of disputed compensation as to land, and to  
 be calculated on the basis of the value of the land at the time of the  
 purchase thereof.

\* \* \* \* \*

The Prison Act, 1877 (40 & 41 Vict. c. 21), while vesting prisons in the  
 Prison Commissioners, exempted town halls, court-houses, and other rooms  
 used for purposes other than those connected with the prison, but the  
 Secretary of State was given power to purchase them. The following is  
 the provision :

## THE PRISON ACT, 1877.

9. Town halls, court-houses, or other rooms situate within the curtilage Appropria-  
 of a prison or forming part of a prison as defined by this Act, and which tion of  
 town halls, court-houses, or other rooms are used for the holding assizes or court-houses  
 or sessions, or for purposes other than those connected with the manage- situate  
 ment of a prison, shall not be transferred to or vested in the Secretary of within the  
 State under this Act, but it shall be lawful for the Secretary of State, with precincts of  
 the consent of the Treasury, if he thinks it desirable, to purchase such town a prison.  
 halls, court-houses, or other rooms so situate as aforesaid from the local  
 authority to whom the same belong ; and for the purposes of such purchase  
 the Lands Clauses Consolidation Acts, 1845, 1860, and 1869 shall be incor-  
 porated with this section, and in the construction of the said incorporated Acts  
 this Act shall be deemed to be the special Act, and the Secretary of State  
 shall be deemed to be the promoter of the undertaking.

## THE ALLOTMENTS ACT, 1887.

(50 &amp; 51 VICT. c. 48.)

*An Act to facilitate the provision of allotments for the labouring classes.* [16th September 1887.]

\* \* \* \* \*

The law in respect to the purchase, taking, or hiring of lands for allotments is contained in this Act, in the Allotments Act, 1890 (53 & 54 Vict. c. 65), and in the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*. Some of the provisions in the last of these statutes are inconsistent with those in the earlier, and, although not expressly repealed, these earlier provisions must be treated as impliedly repealed.

According to s. 2 of this Act, its provisions may be put into force by a written representation being sent to the sanitary authority, now the district council, by six parliamentary electors or six resident ratepayers stating that allotments are required for the labouring classes, and that they cannot be obtained on reasonable terms. The district council are then required to inquire into the facts and, if satisfied of their correctness, they are required to purchase or hire suitable land for the purpose, and to let such land in allotments. The district council have also similar power to acquire lands for providing common pasture.

By the Allotments Act, 1890, it is provided that the persons representing that allotments are required may appeal to the county council if the district council have failed to acquire sufficient suitable land for allotments. The county council can, if satisfied of the inadequacy of the land acquired, then pass a resolution to that effect, and thereupon the powers and duties of the district council shall be transferred to the county council, who shall proceed to acquire the land (s. 2), and the Act of 1887 will apply with the necessary modifications. The council shall also appoint a standing committee for this purpose, and they may make a provisional order, as mentioned in s. 3 (2) of the 1887 Act, for the purchase of land on the recommendation of the standing committee, without any petition from the district council, and the county council shall be considered as the promoter of the order. The county council may, on the request of the district council, transfer to them any of the powers and properties under this Act in respect of their district.

The Local Government Act, 1894, s. 6 (3), provides that a parish council shall have the same power of making a representation with respect to allotments, as is conferred on parliamentary electors by the Allotments Acts, 1887 and 1890, but without prejudice to the powers of the electors, and sub-s. (17) of s. 9 enables the parish council to petition the county council, as provided by s. 2 of the Allotments Act of 1890.

The following are the provisions in this Act as to acquiring land, but these, it will be seen, are modified by s. 9 of the Local Government Act, 1894, *post* :

Acquisition  
of land for  
purpose of  
Act.

**3.—(1)** For the purposes of the purchase of land by agreement by a sanitary authority for allotments, section one hundred and seventy-eight of the Public Health Act, 1875 (a), and the Lands

causes Consolidation Act, 1845, and the Acts amending the same, **Sect. 3.**  
 all be incorporated with this Act, except the provisions with **38 & 39 Vict.**  
 respect to the purchase and taking of land otherwise than by **c. 55.**  
 agreement, and with respect to the provision to be made for **8 & 9 Vict.**  
 forwarding access to the special Act. **c. 18.**

(2) If a sanitary authority are unable by hiring or purchase by agreement to acquire suitable land sufficient for allotments under this Act for any district or parish at a reasonable price or rent and subject to reasonable conditions, such authority may petition the county authority of the county in which the district or parish is situate, and the county authority (b) (after such inquiry and procedure as provided in the sections hereinafter incorporated in this Act) may make a provisional order authorising the sanitary authority to put in force, as respects the land mentioned in the order, the provisions of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same with respect to the purchase and taking of land otherwise than by agreement.

(3) The Local Government Board, on the application of any county authority, shall introduce into Parliament a Bill confirming provisional orders made under this Act by such county authority, and the sanitary authority petitioning for the order shall be considered as the promoters of such order.

(4) For the purpose of the purchase of land under this section otherwise than by agreement, sections one hundred and seventy-six (c), two hundred and ninety-six, and two hundred and ninety-seven (c) of the Public Health Act, 1875, shall, so far as consistent with the tenour of this Act, be incorporated with this Act, and apply as if they were herein re-enacted, with the substitution of "the county authority" for "the Local Government Board," and "any officer of the county authority appointed for the purpose of an inquiry" for "inspectors of the Local Government Board."

Provided that—

(a) Any question of disputed compensation shall be referred to the arbitration of a single arbitrator appointed by the parties, or if the parties do not concur in the appointment of a single arbitrator, then, on the application of either of them, by the Local Government Board, and the remuneration to be paid to the arbitrator appointed by the Local Government Board shall be fixed by that Board:

(b) If an arbitrator appointed for the purposes of this Act dies or becomes incapable to act before he has made his award, or fails to make his award within two months

**Sect. 3.**

after he is appointed, his appointment shall determine, and the determination of the compensation shall be referred to another arbitrator appointed in like manner as if no arbitrator had been previously appointed: Provided always, that the same arbitrator may be re-appointed :

- (c) An arbitrator appointed under this section shall be deemed to be an arbitrator within the meaning of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, and the provisions of those Acts with respect to an arbitration shall apply accordingly ; and, further, the arbitrator, notwithstanding anything in the said Acts, shall determine the amount of the costs and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily.

(5) In construing for the purposes of this section any section or Acts incorporated with this section, this Act, together with any Act confirming a provisional order under this section, shall be deemed to be the special Act, and the sanitary authority shall be deemed to be the local authority or the promoters of the undertaking, as the case requires, and the word "land" shall have the same meaning as in this Act.

(6) Where land is purchased by a sanitary authority under this Act otherwise than by agreement, the following provisions shall apply :

- (a) The county authority shall not make a provisional order for purchasing any park, garden, pleasure-ground, or other land required for the amenity or convenience of any dwelling-house, or any land the property of a railway or canal company which is or may be required for the purposes of their undertaking :
- (b) The county authority shall, in making a provisional order for purchasing land, have regard to the extent of land held in the neighbourhood by any owner and to the convenience of other property belonging to the same owner, and shall so far as is practicable avoid taking an undue or inconvenient quantity of land from any one owner.

(7) For the purpose of the hiring of land by a sanitary authority for allotments, any person or body of persons or body corporate authorised to sell land to the sanitary authority for the

purposes of this Act may, without prejudice to any other power of leasing, lease land to the sanitary authority, without any fine or premium, for a term not exceeding thirty-five years.

**Sect. 3.**

(8) The county authority shall not make a provisional order for purchasing any right to coal or metalliferous ore.

° ° ° ° °

(a) See *ante*, p. 462. Section 178 deals with land belonging to the Duchy of Lancaster.

(b) See s. 16, *infra*, and note.

(c) Section 176 of the Public Health Act, 1875, provides that land may be taken compulsorily, under a provisional order, *ante*, p. 457, and ss. 296 and 297 relate to inquiries and granting of provisional orders.

The latter part of sub-s. (2) and the whole of sub-s. (3) and the first part of sub-s. (4) are inconsistent with the provisions of the Local Government Act, 1894. Section 9 thereof provides a different method of obtaining a provisional order (see *post*), and the order does not require to be confirmed by Act of Parliament. Sub-s. (3) of that section applies this procedure to any proceeding under the Allotment Acts. The provisos (a) (b) (c) of sub-s. (4) and sub-ss. (5) (6) (7) and (8) of this section of the Allotment Act, 1887, are incorporated in respect of the taking of land generally under the Local Government Act, 1894. See s. 9 (10) (13), *post*. In addition to the provision as to purchasing minerals in sub-s. (8), the mining sections of the Railways Clauses Consolidation Act, 1845, are to be incorporated in any order for the purchase of land under the Local Government Act, 1894, s. 9 (10).

Section 10 of the Local Government Act, 1894, enables the parish council to hire land compulsorily for allotments. In such cases the compensation is to be determined by an arbitrator to be appointed in accordance with the provisions of the above section of the Allotments Act, 1887. See sub-ss. (2) (7) and (10) of s. 10, *post*.

See the definitions of "allotment" and "land" in s. 17, *infra*.

11.—(1) Where the sanitary authority are of opinion that any land acquired by them in pursuance of this Act or any part thereof is no longer needed for the purpose of allotments, or that any other land more suitable for such purpose is available, they may, with the sanction of the county authority, sell or let such land or part, or exchange the same for other land more suitable for the said purpose, and may pay or receive money for equality of exchange.

Sale of  
superfluous  
or unsuitable  
land.

(2) The proceeds of a sale under this section and any money received by the sanitary authority on any such exchange as aforesaid by way of equality of exchange, shall be applied in discharging, either by way of a sinking fund or otherwise, the debts and liabilities of the sanitary authority in respect of the land acquired under this Act, or in acquiring, adapting, and improving other land for allotments under this Act, and any surplus remaining may be applied for any purpose for which

**Sect. 11.** capital money may be applied, and which is approved by the Local Government Board ; and the interest thereon (if any) and any money received from the letting of the land may be applied in acquiring other land for allotments, or shall be applied in like manner as receipts from allotments under this Act are applicable : Provided that any such proceeds, surplus, interest, and money shall, in the case of a rural sanitary district, be credited to or applied for the benefit of the parish for which the land was purchased.

(3) Sections one hundred and twenty-eight to one hundred and thirty-two (both inclusive) of the Lands Clauses Consolidation Act, 1845 (relating to the right of pre-emption of superfluous lands) (a), shall apply upon any sale by a sanitary authority in pursuance of this section of any land, whether because it is no longer needed for the purpose of allotments, or because other land more suitable for the purpose is available, but save as aforesaid, the provisions of the Lands Clauses Consolidation Act, 1845, with respect to the sale of superfluous lands shall not be deemed to be incorporated in this Act, or in any provisional order made under this Act.

(a) *Ante*, pp. 260—264.

This section is incorporated in the Local Government Act, 1894, s. 9 (13), in respect of land taken for all the purposes of that Act.

Power to  
make scheme  
for provision  
of common  
pasture.

**12.** Where it appears to any sanitary authority that, as regards their district, if urban, or any parish in their district, if rural, land can be acquired for affording common pasture at such price or rent that all expenses incurred by the sanitary authority in acquiring the land and otherwise in relation to the land when acquired may reasonably be expected to be recouped out of the charges paid in respect thereof, and that the acquisition of such land is desirable in view of the wants and circumstances of the labouring population, such sanitary authority may submit to the county authority for the county in which the district or parish is wholly or partly situate a scheme for providing such common pasture, and the county authority, if satisfied of the expediency of such scheme, may by order authorise the sanitary authority to carry it into effect, and upon such order being made this Act shall, with the necessary modifications, apply in like manner as if "allotments" in this Act included common pasture, and "rent" included a charge for turning out an animal.

Provided that the regulations made under this Act may extend to regulating the turning out of animals on the common pasture

to defining the persons entitled to turn them out, the number to be turned out, and the conditions under which animals may be turned out, and fixing the charges to be made for each animal, and otherwise to regulating the common pasture. Sect. 12.

The expression "allotments" in s. 9 of the Local Government Act, 1894, includes commonpasture (sub-s. (16)) where authorised to be acquired under the Allotments Act, 1887, but apparently land cannot be hired for common pasture under s. 10 of the Local Government Act, 1894.

\* \* \* \* \*

**16.** For the purposes of this Act "county authority" shall be any representative body elected by the inhabitants of the county which may be established under any Act of any future session of Parliament, and until such representative body is established the powers and duties of the county authority under this Act shall be exercised and performed by the Local Government Board, and the provisions of this Act and of the enactments incorporated with this Act shall accordingly be construed with the necessary modification. Definition  
of county  
authority.

The county authority is now the county council (Local Government Act, 1888). By s. 34 (7), in the case of county boroughs, the powers and duties under this Act shall continue to be exercised by the Local Government Board.

**17.** In this Act, unless the context otherwise requires— Definitions.

The expression "allotment" includes a field garden.

The expressions "urban district" and "rural district" mean respectively an urban and rural sanitary district within the meaning of the Public Health Act, 1875.

The expression "sanitary authority" means the urban sanitary authority of an urban sanitary district and the rural sanitary authority of a rural sanitary district within the meaning of the Public Health Act, 1875 (a).

The expression "land" includes pasture, arable, and other land, and any right of way or easement.

(a) These are now borough councils and urban and rural district councils (Local Government Act, 1894, s. 21).

## LLOYD'S SIGNAL STATIONS ACT, 1888.

(51 & 52 VICT. c. 29.)

*An Act to confer powers on Lloyd's with respect to signal stations and telegraph communication, and for other purposes.*

[13th August 1888.]

34 & 35 Vict. c. xxi. WHEREAS it is expedient for the purpose of assisting in the preservation of life and in the interests of trade and navigation that the society and corporation incorporated under the name of "Lloyd's" by section three of Lloyd's Act, 1871 (in this Act referred to as the "society"), be authorised to acquire compulsorily, with the sanction of the Board of Trade, or by agreement, land for the purpose of signal stations and signal houses, and to arrange for telegraphic communication therewith, at such places on or near the coast of the British Islands as they think fit ;

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited as Lloyd's Signal Stations Act, 1888.

Lloyd's to have power to establish signal stations with telegraphic communications.

2. The society may, subject to the restrictions and conditions contained in this Act, execute the following works and do the following things, namely :

- (1) Establish signal stations and erect and place signal houses with all requisite works, roads, appurtenances, and appliances at such places on the coast of the British Islands, or any islands, shoals, or rocks lying near thereto, as they think fit, and maintain and work the same with a proper staff of keepers, officers, and servants, and from time to time alter or remove any such signal houses or discontinue any such signal stations :
- (2) For the purpose of connecting any of the said signal stations or signal houses with each other or with postal telegraph stations, enter into arrangements with the Postmaster-General for the placing, maintaining, and

working of wires for the purpose of telegraphic or telephonic communication by him upon such terms and conditions as he shall prescribe :

**Sect. 2.**

- (3) Acquire by compulsion or agreement and hold any lands which may from time to time be necessary for any of the above purposes or for the purpose of providing residences and suitable gardens for signalmen and signal-house keepers. Provided that the extent of land to be acquired by compulsion under this Act at any one place shall not exceed two acres exclusive of the necessary means of approach ; but nothing in this Act shall empower the society to take any part of a railway or canal :
- (4) When necessary, but subject to the provisions of the Lands Clauses Act with respect to the sale of superfluous lands, dispose by way of sale, lease, or otherwise, of any lands acquired by them for any of the purposes aforesaid.

**3.**—(1) With a view to the purchase of land for the purposes of this Act the Lands Clauses Acts, except the provisions relating to access to the special Act, and except any provisions inconsistent or not applicable to the objects and purposes of this Act, shall be incorporated in this Act, and in construing the Lands Clauses Acts for the purposes of this Act this Act and any Act confirming an order made in pursuance of this Act shall be deemed to be the special Act, and the society shall be deemed to be the promoters of the undertaking, and the word “land” shall include easements and rights in and over land.

**Incorporation  
of Lands  
Clauses Acts.**

(2) The society, before putting in force any of the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, shall—

- (A) Publish once at the least in each of three consecutive weeks in the course of the months of September, October, and November in some one and the same newspaper circulating in the locality an advertisement describing shortly the object for which the land is proposed to be taken, naming a place in the neighbourhood of the land proposed to be taken where a plan of the land may be seen at all reasonable hours, and stating the quantity of the land ; and
- (B) During the month next following the month in which the last of the advertisements is published, serve a

**Sect 3.**

notice in manner mentioned in this section on every owner or reputed owner, lessee or reputed lessee, and occupier of the land, so far as such owners, lessees, and occupiers can be reasonably ascertained, defining in each case the land intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect to the taking of the land.

(3) (i) Service of a notice on a person may be made by delivery of the notice to him personally or by leaving the notice at his usual or last known place of abode, or by forwarding it by post in a registered letter addressed to his usual or last known place of abode.

(ii) A notice required to be served on a number of persons having any right in common in, over, or on land, may be served on any three or more of those persons on behalf of all of such persons, and should there be any bailiff, steward, reeve, or other duly appointed officer or trustee of or charged with the care or management of such land on behalf of such persons, notice shall also be served on such bailiff, steward, reeve, or other officer or trustee.

(iii) Where a notice is served by registered letter, it shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and the production of the post office receipt for such letter duly stamped shall be sufficient evidence of the due delivery of such letter, provided it shall appear that the same was sufficiently and properly directed, and that the same was not returned by the post office as undelivered.

(iv) Where a person required to be served is absent abroad or cannot be found, the notice may be served on his agent.

(4) Upon compliance as respects any land with the provisions contained in this section with respect to advertisements and notices, the society may, if they think fit, present a petition to the Board of Trade. The petition shall describe the land, and state the purposes for which it is required, and the names of the owners and lessees or reputed owners or lessees, and occupiers of land who have assented, dissented, or are neuter in respect of the taking of the land, or who have returned no answer to the notice, and shall pray for an order authorising the society with reference to the land to put in force the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, and shall be supported by such evidence as the Board of Trade may require.

**Sect. 3.**

(5) If, on consideration of the petition and proof of the publication of the proper advertisements and service of the proper notices, the Board of Trade think fit to proceed with the case, they may, if they think fit, appoint some person to inquire in the locality in which the land is situate respecting the propriety of making the order prayed for, and also direct that person to hold a public inquiry, and if a public inquiry is held, the person holding the same shall have the same powers as an inspector appointed under the Merchant Shipping Act, 1854, 17 & 18 Vict. c. 104. and the Acts amending the same.

(6) After such consideration and proof, and if there is an inquiry after receiving the report made upon such inquiry, the Board of Trade may make a provisional order authorising the society to put in force with reference to the land referred to in the petition, or such part thereof as is described in the order, the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement or any of them, and that either absolutely or with such conditions and modifications as they may think fit, and it shall be the duty of the society to serve a copy of any order so made in the manner and on the persons in which and on whom notices in respect of the land to which the order relates are required by this Act to be served.

(7) A provisional order so made shall not be of any validity unless the same has been confirmed by Act of Parliament; and it shall be lawful for the Board of Trade as soon as conveniently may be to obtain such confirmation. If, while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against the order, the Bill, so far as it relates to the order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills, and the Act confirming the order shall be deemed to be a public general Act of Parliament.

(8) An order made in pursuance of this section when confirmed by Parliament with such modifications as seem fit to Parliament shall have full effect.

(9) The Board of Trade, in case of refusing or modifying the order prayed for, may make such order as they think fit for the allowance of the reasonable costs, charges, and expenses which any person whose land was proposed to be taken has properly incurred in opposing the order.

(10) All costs, charges, and expenses incurred by the Board of Trade in relation to any order or proposed order under this section, and all costs, charges, and expenses of any person which are so allowed by the Board of Trade as aforesaid, shall be a

**Sect. 3.**

charge on the funds of the society and be paid to the Board of Trade and to that person respectively by the society within fourteen days after demand.

(11) Any land purchased in pursuance of any order under this section confirmed by Act of Parliament shall be purchased within one year after the passing of such Act.

(12) The provisions of this Act with respect to the purchase of land by the society shall extend to the purchase of land of which the society are lessees or occupiers in like manner as if another person were for the time being lessee or occupier of the land, save that the provisions with respect to the notices to and the assent or dissent of and the service of a copy of the order on lessees and occupiers shall not apply so far as respects the society, and save that after an order under this section for purchasing the land is confirmed by Parliament the society may give notice to and purchase the estate, right, or interest of some one or more only of the parties interested in the land, but in that case they shall, if any other of such parties by notice in writing so requires them, purchase the estate, right, or interest in the land of that party.

Power to  
take ease-  
ments by  
agreement.  
8 & 9 Vict.  
c. 18.  
23 & 24 Vict.  
c. 106.

**4.** Persons empowered by the Lands Clauses Consolidation Act, 1845, to sell and convey or release lands may, if they think fit, subject to the provisions of that Act and of the Lands Clauses Consolidation Acts Amendment Act, 1860, and of this Act, grant to the society any easement, wayleave, right, or privilege required for the purposes of this Act in, over, or affecting any such lands, and the provisions of the said Acts with respect to lands and rentcharges, so far as the same are applicable in this behalf, shall extend and apply to such grants and to such easements, wayleaves, rights, and privileges as aforesaid respectively.

\* \* \* \*

Sections 5—10 of the Act contain savings in respect of lands held by the Admiralty and War Office, the Post Office and other Government Departments, and by lighthouse authorities, which lands can only be entered upon or taken by agreement. The bed and shores of the Thames are not to be interfered with except with the consent of the conservators, nor the foreshores of the country without the consent of the Board of Trade.

Lands of the Duchies of Lancaster and Cornwall and of the Crown are also excluded from the compulsory powers of the Act. The works of any undertakers within the meaning of the Electric Lighting Act, 1882, are not to be interfered with.

## THE LOCAL GOVERNMENT ACT, 1888.

(51 & 52 VICT. c. 41.)

*An Act to amend the Laws relating to Local Government in England and Wales, and for other purposes connected therewith.*

[13th August 1888.]

\* \* \* \* \*

**65.**—(1) A county council may, from time to time, for the purpose of any of their powers and duties, including those which are to be executed through the standing joint committee, acquire, purchase, or take on lease, or exchange any lands or any easements or rights over or in land, whether situate within or without the county, and may acquire, hire, erect, and furnish such halls, buildings, and offices as they may from time to time require, whether within or without their county. Power to acquire lands.

(2) For the purpose of the purchase, taking on lease, or exchange of such lands, sections one hundred and seventy-six, one hundred and seventy-seven, and one hundred and seventy-eight of the Public Health Act, 1875 (*a*), shall apply as if they were herein re-enacted, and in terms made applicable to the county council.

(3) Where the county council, with the consent of the Local Government Board, sell any land, the proceeds of such sale shall be applied in such manner as the said Board sanction towards the discharge of any loan of the council, or otherwise for any purpose for which capital may be applied by the council.

(*a*) See *ante*, pp. 457 *et seq.* These sections incorporate the Lands Clauses Acts. Compulsory powers may be obtained by provisional order.

"For the purpose of any of their powers."—By s. 64 the existing county buildings will pass to the county council, subject to the rights of the quarter sessions and justices to hold courts in them.

The purposes for which land may be acquired under this Act are not numerous. Section 11 gives them the powers of a highway board as to main roads, which powers include the taking of land to widen them. See the Highway Act, 1835, in Appendix. County councils are, however, empowered by various subsequent Acts to take land for the purposes of these Acts, as, for example, the Allotments Act, 1887. See *ante*, p. 500; the Housing of the Working Classes Act, 1890, *post*; the Isolation Hospitals Act, 1893, *post*; the Diseases of Animals Act, 1894, *post*; and the Light Railways Act, 1896. These statutes, however, contain provisions in respect of the purchase and taking of land. For the compulsory

**Sect. 65.** purchase a provisional order is almost invariably required. Land may also be purchased by agreement under the Small Holdings Act, 1892.

**NOTE.** The consent of the Local Government Board to the sale of any land is required by s. 64 (3).

\* \* \* \* \*

**Incorporation  
of county  
council.**

**79.**—(1) The council of each county shall be a body corporate by the name of the county council with the addition of the name of the administrative county, and shall have perpetual succession and a common seal and power to acquire and hold land for the purposes of their constitution without license in mortmain.

By s. 3 (4) the powers of quarter sessions to acquire land for shire halls, assize courts, judges' lodgings, etc., are transferred to the county council, as to which see 7 Geo. 4, c. 63 ; 7 Will. 4 & 1 Vict. c. 24 ; 2 & 3 Vict. c. 69 ; 10 & 11 Vict. c. 28, but no compulsory powers were conferred. See, further, Macmorran and Dill's Local Government Act, 1888, notes to s. 3.

## THE ARBITRATION ACT, 1889.

(52 &amp; 53 VICT. c. 49.)

*An Act for amending and consolidating the Enactments relating to Arbitration.* [26th August 1889.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

**Construction.**—This Act repeals the enactments mentioned in the second schedule (see note to s. 26, *post*, p. 530) ; but inasmuch as several of these are re-enacted in substance, expressions in these repealed Acts which have received judicial construction will be construed according to these previous decisions. See *Hodgson v. Bell* (1890), 24 Q. B. D. 302, at p. 305.

If any part of the Arbitration Act, 1889, is enacted in the same terms as those used in the Common Law Procedure Act, then if decided cases have determined the construction to be placed on the Common Law Procedure Act, the court must adhere to those decisions when called upon to place a construction upon that part of the Arbitration Act in which the same language is used with regard to the same subject-matter (*In re Keighley, Marsted & Co. and Durant & Co.*, [1893] 1 Q. B. 405, 409). But where larger words are used in this than in the previous Act, the rule is that such larger words were used intentionally and must have a meaning given to them (*Hurlbatt v. Barnett & Co.*, [1893] 1 Q. B. 77, 79).

**Application of Act.**—This Act applies to arbitrations under all statutes in so far as it is not inconsistent with them (s. 24), and it applies to every arbitration commenced after the commencement of this Act (January 1st, 1890), under any agreement or order made before the commencement, except pending arbitrations (s. 25, and see *In re Williams and Stepney*, [1891] 2 Q. B. 257).

## REFERENCES BY CONSENT OUT OF COURT.

1. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the court or a judge, and shall have the same effect in all respects as if it had been made an order of court.

Submission to be irrevocable, and to have effect as an order of court.

**"Submission."**—See definition, s. 27, *post*, p. 531.

A submission to arbitration under s. 25 of the Lands Clauses Consolidation Act, 1845, was held to be a submission by consent under the Common Law Procedure Act, 1854 (*Rhodes v. Airedale Drainage Commissioners* (1876), 1 C. P. D. 402, and cases cited to s. 25 of the Lands Clauses Consolidation Act, 1845, in note "A submission to arbitration," *ante*, p. 56. It is deemed to be a submission by consent under this Act.

**Sect. 1.****NOTE.**

**"Shall be irrevocable."**—By s. 25 of the Lands Clauses Consolidation Act, 1845, it is provided that neither party shall have power to revoke without the consent of the other. That section gives no power to a court to revoke, but such power would now exist under this section. See s. 25, note "Revocation," *ante*, p. 56.

In determining whether to revoke a submission or not the court will be bound by the previous decisions, and can only revoke on the grounds for which courts had power to revoke when the submission was made a rule of court (*In re Smith and Nelson* (1890), 25 Q. B. D. 545, 550; and see *Re Baring Brothers & Co. and Doulton & Co.* (1892), 61 L. J. Q. B. 704; *Belcher v. Roedean School* (1901), 85 L. T. 468). The court will allow a submission to be revoked or restrain an arbitration if the arbitrator has become interested or is incompetent, or there is a strong likelihood of bias (*Beddow v. Beddow* (1878), 9 Ch. D. 89; *Re Frankenberg and The Security Co.* (1894), 10 T. L. R. 393; *The City of Calcutta* (1898), 79 L. T. 517); but possibility of bias is not enough as where an arbitrator in a compensation case was asked by the promoters to give, and did give, evidence in another compensation case pending the making of the award (*In re Haigh and London and North Western Rail. Co. and Great Western Rail. Co.*, [1896] 1 Q. B. 649). Where the arbitrator is named in the agreement, interest is not a sufficient ground to revoke a submission, and there must be actual bias (*Jackson v. Barry Rail. Co.*, [1893] 1 Ch. 238; *Eckersley v. Mersey Docks and Harbour Board*, [1894] 2 Q. B. 667; *Bright v. River Plate Construction Co.*, [1900] 2 Ch. 825).

**"Court or a judge."**—Or master, see s. 21 and O. 54, r. 12A. Leave to revoke will therefore be obtained by summons before a master.

An appeal from a judge in chambers on the question of the revocation of a submission lies to the Court of Appeal under s. 1 (4) of the Supreme Court of Judicature Act, 1894 (*In re an Arbitration between the Portland Urban District Council and Tilley & Co.*, [1896] 2 Q. B. 98).

**"Same effect . . . as an order of court."**—This does not make the arbitration a "proceeding in the court" within the meaning of O. 37, r. 5, of the Rules of the Supreme Court, and the court has no power to order the issue of a commission for the examination of witnesses in an arbitration, nor does it give the court power to order a party to appoint an arbitrator under an agreement to refer disputes to three arbitrators, one to be appointed by each of the parties and the third by the two so appointed, where one of the parties refuses (*Smith and Nelson's Arbitration* (1890), 25 Q. B. D. 545).

*Cf.* 3 & 4 Will. 4, c. 42, s. 39, and Common Law Procedure Act, 1854, s. 17, repealed by this Act.

Provisions  
implied in  
submissions.

**2.** A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule to this Act, so far as they are applicable to the reference under the submission.

**"A submission."**—See definition, s. 27 and note to s. 1. In submissions made before the Act these provisions in the First Schedule are deemed to be included, although they may add to the agreement between the parties (*In re Williams and Stepney*, [1891] 2 Q. B. 257).

The Lands Clauses Consolidation Act, 1845 (ss. 25—37), contains provisions of a somewhat similar nature to those in the schedule, and these provisions will only be deemed to be included in so far as they are not at variance with those already provided in that statute. See notes to the provisions in the First Schedule.

**Sect. 2.**

**NOTE.**

**THE FIRST SCHEDULE.**

**PROVISIONS TO BE IMPLIED IN SUBMISSIONS.**

(a) If no other mode of reference is provided, the reference shall be to a single arbitrator.

Section 25 of the Lands Clauses Consolidation Act, 1845, provides for the mode of reference.

(b) If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

Section 27 of the Lands Clauses Consolidation Act, 1845, provides that the two arbitrators shall appoint an umpire "before they enter upon the matters referred to them." This provision might perhaps apply if the umpire appointed refused to act.

See note to s. 27, "Nominate and appoint an umpire," *ante*, p. 58.

(c) The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

Under the Lands Clauses Acts, the arbitrators have twenty-one days within which to award; but they may extend it to three months (Lands Clauses Consolidation Act, 1845, ss. 23, 31).

As to the power of the court to enlarge the time, see s. 9, *post*.

As to the meaning of "called on to act," see *In re Baring Gould and Sharpington Combined Pick and Shovel Syndicate*, [1899] 2 Ch. 80.

(d) If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

By s. 31 of the Lands Clauses Consolidation Act, 1845, a similar provision is made if the arbitrators allow their time or extended time to expire. Section 27 provides that the umpire is to decide matters on which they differ. As there is no provision as to how this is to be signified to the umpire, this proviso will doubtless apply.

(e) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

Under the Lands Clauses Consolidation Act, 1845, the umpire has three months to make his award from the date when the duty devolves upon him (s. 23 of that Act, and note "For three months," *ante*, p. 51), and has no power to enlarge it, as the matter must then be decided by a jury unless the parties consent.

**Sect. 2.****NOTE.**

As to the power of the court to enlarge the time, see s. 9.

As to the time within which an umpire has to award under the Public Health Act, 1875, see *Knorles v. Bolton Corporation*, [1900] 2 Q. B. 253.

(f) The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

See s. 7 of this Act, and s. 32 of the Lands Clauses Consolidation Act, 1845, as to examining witnesses. The examination on oath under the Lands Clauses Acts is not compulsory. See notes to s. 32, *ante*, p. 61.

(g) The witnesses on the reference shall, if the arbitrators or umpire thinks fit, be examined on oath or affirmation.

See s. 32 of the Lands Clauses Consolidation Act, 1845, and as to issuing writs of subpoena to compel the attendance of witnesses, see ss. 8 and 18 of this Act.

(h) The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

Notwithstanding this proviso the court has power to remit the award under s. 10 of this Act.

Under the Lands Clauses Acts the award is only binding as to the amount and not as to the claimant's right to compensation. See s. 23 of the Lands Clauses Consolidation Act, 1845, and note "The same shall be so settled," *ante*, p. 50.

(i) The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

Provision as to costs in arbitrations under the Lands Clauses Acts is made in s. 34 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 63, and as to taxation, in the Lands Clauses (Taxation of Costs) Act, 1895, *post*, p. 606. As to the taxation of the costs of an arbitration agreed to be paid, see *Malvern Urban District Council v. Malvern Link Gas Co.* (1900), 83 L. T. 326.

This proviso would no doubt apply to cases of arbitration under agreements as to the value of land to be taken where the Lands Clauses Acts do not apply.

If the arbitrator or umpire settle the costs he must do so in his award, and may include his own costs therein (*Re Stephens and Liverpool and London and Globe Insurance Co.* (1892), 36 Sol. J. 464), but if he does not settle the costs they are liable to be taxed, including his own charges (*In re Prebble and Robinson*, [1892] 2 Q. B. 602). In a case where one of the parties to an arbitration took up an award and paid the umpire's charges, and the costs were afterwards taxed as between the parties to the arbitration, whereupon part of the umpire's fees were disallowed, it was held that the amount disallowed could be recovered from the umpire unless the fees were proved

by him to be reasonable (*Llanrindod Wells Water Co. v. Hawcksley and Others* (1903), 19 T. L. R. 402). As to taxation of the costs of the solicitor for preparing the award, see *Re Collyer, Bristow & Co.*, [1901] 2 K. B. 839.

Sect. 2.

NOTE.

3. Where a submission provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of the court or a judge as to transfer or otherwise, hear and determine the matters agreed to be referred.

Reference to official referee.

This is a substantial re-enactment of the Judicature Act, 1884, s. 11.

4. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

Power to stay proceedings where there is a submission.

*Cf.* the repealed provisions in the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 11.

**Application to Lands Clauses Acts.**—Questions of disputed compensation under the Lands Clauses Acts must be decided according to the methods therein provided. If a person makes a claim upon the promoters and arbitration is insisted on under these Acts, the promoters cannot in any proceedings before the court prevent the arbitrator from dealing with the question, because they allege plausibly or not that the claimant has no right to compensation, and the same is true under the Public Health Act, 1875 (*Brierley Hill Local Board v. Pearsall* (1884), 9 App. Cas. 595; and see note "The same shall be so settled," to s. 23 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 50). Where it is provided by statute that all differences are to be settled by arbitration, that is the only remedy available (*Caledonian Rail. Co. v. Greenock and Wemyss Bay Rail. Co.* (1874), L. R. 2 Sc. App. 347). Similarly if notice to treat has been given, the landowner has no action of specific performance until the amount has been settled. If he brought such an action the defendants might possibly stay the proceedings as provided in this section; but they might also have the statement of claim struck out, as disclosing no cause of action.

**Time to apply.**—An application under this section must be made before taking any other step in the action. Thus an application for a stay until security for costs be given is "a step in the proceedings," such as to disentitle the defendant from proceeding under this section (*Adams v. Cattley* (1892), 66 L. T. 687), so is delivery of a defence (*West London Dairy Society v. Abbott* (1881), 29 W. R. 584). A "step in the proceedings," means some application to the court by summons or motion, and does not include an application from one party to the other, as, for example, requiring the

**Sect. 4.****NOTE.**

delivery of a statement of claim (*Ires and Barker v. Willans*, [1894] 2 Ch. 478), or writing to the plaintiff asking for further time to plead (*Brighton Marine, etc. Co. v. Woodhouse*, [1893] 2 Ch. 486), or filing affidavits in reply on a motion (*Zalinfoff v. Hammond*, [1898] 2 Ch. 92). The taking out of a summons for further time to deliver the defence would, however, be a step in the action (*Bartlett v. Ford's Hotel Co.*, [1896] A. C. 1), and attending a summons for directions where an order for discovery was made as to both parties (*County Theatres and Hotels, Limited v. Knowles*, [1902] 1 K. B. 480, followed in *Richardson v. Le Maitre*, [1903] 2 Ch. 222).

**"Court or a judge."**—Includes master (s. 21, *infra*, and O. 54, r. 12A).

Power for the court in certain cases to appoint an arbitrator, umpire, or third arbitrator.

**5.** In any of the following cases :

- (a) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not after differences have arisen concur in the appointment of an arbitrator :
- (b) If an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy :
- (c) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him :
- (d) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy :

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

If the appointment is not made within seven clear days after the service of the notice, the court or a judge may, on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

In case (a) if the parties do not concur in the appointment of a single arbitrator, the procedure under the Lands Clauses Acts is according to s. 25 of the Lands Clauses Consolidation Act, 1845.

In case (b) if two arbitrators are appointed, and one dies or becomes incapable, s. 26 of the Lands Clauses Consolidation Act, 1845, makes provision for the appointment of another, and if this is not done the other may proceed alone. If one refuse, s. 30 of that Act provides that the other may proceed alone. If a single arbitrator die or become incapable, s. 29 provides that the matter shall proceed *de novo*.

In case (c) if the arbitrators fail to appoint, the Board of Trade is empowered to do so (Lands Clauses Consolidation Act, 1845, s. 28, and Lands Clauses (Umpire) Act, 1883, s. 2).

In case (d), s. 27 of the Lands Clauses Consolidation Act, 1845, provides for the arbitrators appointing a new umpire, in case the one appointed die or become incapable. There is, however, no provision if he refuse to act, so that in such a case the provisions of this section might be applicable. They are apparently not applicable where there is any machinery whereby an appointment can be obtained; if there is no such machinery, the judge may appoint. See *In re Wilson & Sons and Eastern Counties Navigation Co.*, [1892] 1 Q. B. 81; 8 Times Rep. 264. As to the applicability of this section to a case where the arbitrators do not appoint under s. 27, see *R. v. Manley Smith* (1893), 63 L. J. Q. B. 171, p. 173.

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**NOTE.**

“The court or a judge may.”—“May” in this section means generally “must,” and as a general rule where the conditions exist under which this section is applicable, the court or a judge has no discretion to refuse to appoint (*Eyre and the Corporation of Leicester*, [1892] 1 Q. B. 136; *Aitken v. Batchelor* (1893), 62 L. J. Q. B. 193).

The procedure under this section is by summons, which may be before a master in chambers (s. 21, *infra*).

*Cf.* Common Law Procedure Act, 1854, s. 12, repealed by this Act.

**6.** Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention—

Power for parties in certain cases to supply vacancy.

- (a) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;
- (b) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent:

Provided that the court or a judge may set aside any appointment made in pursuance of this section.

*Cf.* Common Law Procedure Act, 1854, s. 13, repealed by this Act.

Similar provisions exist in the Lands Clauses Acts, but without the proviso. See note to last section.

**7.** The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

Powers of arbitrator.

- (a) To administer oaths to or take the affirmations of the parties and witnesses appearing; and
- (b) To state an award as to the whole or part thereof in the form of a special case for the opinion of the court; and

**Sect. 7.**

- (c) To correct in an award any clerical mistake or error arising from any accidental slip or omission.

**"To administer oaths."**—A similar power is given under s. 32 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 61. See note thereto, "May examine the parties or their witnesses on oath."

As to obtaining the attendance of witnesses, see ss. 8 and 18 of this Act, *infra*.

As to punishment for giving false evidence, see s. 22, *infra*.

For form of oath, see Appendix.

**"Take the affirmations."**—By the Oaths Act, 1888, s. 1, "Every person upon objecting to being sworn, and stating, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation."

The arbitrator should learn from the person objecting whether he objects on either of these grounds. If he does not, he must be sworn.

For form of affirmation, see Appendix.

(b) **"In the form of a special case."**—*Cf.* the repealed provision in the Common Law Procedure Act, 1854, s. 5. Under that section the arbitrator had power to state his award in the form of a special case, in cases under the Lands Clauses Acts (*Rhodes v. Airedale Drainage Commissioners* (1876), 1 C. P. D. 402; *Bidder v. North Staffordshire Rail. Co.* (1878), 4 Q. B. D. 412). See note to s. 25, "A submission to arbitration," p. 56. For a recent case, see *Page v. Kettering Waterworks Co.* (1892), 8 T. L. R. 228.

Section 19 of this Act, *infra*, enables an arbitrator to state a special case for the opinion of the court at any stage of the proceedings.

**Appeal.**—An appeal lies from the decision of the court when the award is stated in the form of a special case, as the arbitrator has then exhausted his powers and the opinion of the court will determine the rights of the parties (*In re Kirkleatham Local Board and Stockton and Middlesbrough Water Board*, [1893] 1 Q. B. 375, 380). An appeal, however, did not lie under s. 19 (*In re Knight and Tabernacle Permanent Building Society*, [1892] 2 Q. B. 613). See now Supreme Court of Judicature (Procedure) Act, 1894, s. 1, and notes to s. 19, *infra*, p. 527.

**Practice.**—The special case should be filed in the writ, appearance and judgment department of the central office of the High Court, where a reference number will be given, and which should appear in all subsequent proceedings. The fee for filing is £1. See Orders as to Court Fees, 1884.

**Costs.**—It was formerly held that the court had no jurisdiction over the costs when the award was stated in the form of a special case, as such costs were incidental to the arbitration, and, therefore, fell under the provision of s. 34 of the Lands Clauses Consolidation Act, 1845 (*Re Holliday and Mayor of Wakefield* (1888), 20 Q. B. D. 699, 720). But it has been since decided that this section and s. 20 of this Act, *infra*, p. 528, give the court increased powers as to costs, so that costs of a special case, and of an appeal to the Court of Appeal, may be ordered by the court (*In re Gonty and Manchester, Sheffield and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439, 450).

(c) **"To correct in an award," etc.**—Section 37 of the Lands Clauses Consolidation Act, 1845, provides that no award shall be set aside for irregularity or matter of form. See *ante*, p. 69, and note "Irregularity or error in matter of form."

**8.** Any party to a submission may sue out a writ of subpœna ad testificandum, or a writ of subpœna duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action. **Sect. 8.**  
 Witnesses may be summoned by subpœna.

*Cf.* s. 2, Sched. I. (g), and for witnesses in Scotland or Ireland, and for witnesses in prison, see s. 18, *post*, p. 527, and the Lands Clauses Consolidation Act, 1845, s. 32, *ante*, p. 61, as to examining witnesses, and calling for the production of documents.

**"May sue out a writ of subpœna."**—Under this section these writs issue as of course without any order being required, and are obtained at the writ department of the central office.

The court has no power to order a commission to examine witnesses (*Re Shaw and Ronaldson Arbitration*, [1892] 1 Q. B. 91; *Re Dreyfus and Paul Arbitration* (1893), 37 Sol. J. 357).

**Procedure.**—The procedure as to writs of *subpœna* is governed by the Rules of Supreme Court, Order 37, rr. 26—34. The following regulate the procedure under this section.

26. Where it is intended to sue out a *subpœna*, a *præcipe* for that purpose, in the Form No. 21, in Appendix G., and containing the name or firm and the place of business or residence of the solicitor intending to sue out the same, and, where such solicitor is agent only, then also the name or firm and place of business or residence of the principal solicitor, shall in all cases be delivered and filed at the central office.

Form 21 in Appendix G. is as follows :

Seal writ of *subpœna* , on behalf of the , directed to  
 Returnable  
 Dated the day of , 19 .  
 (Signed)  
 (Address)  
 Solicitor for

27. A writ of *subpœna* shall be in one of the Forms 1—7 in Appendix J., with such variations as circumstances may require.

The following are the forms in Appendix J., which will be available for arbitrations. The headings will, however, require to be altered to suit the arbitration. The usual heading is "In the Matter of an Arbitration between A. B. and C. D. And in the matter of the Arbitration Act, 1889."

No. 1.

**Subpœna ad Testificandum (General Form) (O. 37, r. 27).**

19 . [Here put the letter and number.]

In the High Court of Justice.

Division.

Between

and

, Plaintiff,

, Defendant.

EDWARD THE SEVENTH, by the grace of God, etc., to [the names of three witnesses may be inserted] greeting: We command you to attend before

**Sect. 8.****NOTE.**

at on day the day of , 19 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the plaintiff [*or defendant*].  
Witness, etc.

**No. 2.****Habeas Corpus ad Testificandum** (O. 37, r. 27).

[*Heading as in Form 1.*]

EDWARD THE SEVENTH, by the grace of God, etc. to the [keeper of our prison at]

We command you that you bring , who it is said is detained in our prison under your custody , before at on day the day of , at the hour of in the noon, and so from day to day until the above action is tried, to give evidence on behalf of the . And that immediately after the said shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

Witness, etc.

This writ was issued, etc.

This writ will not issue in an arbitration without an order of a court, a judge or a master. See Arbitration Act, s. 18, *infra*.

**No. 3.****Subpoena Duces Tecum (General Form)** (O. 37, r. 27).

[*Heading as in Form 1.*]

EDWARD THE SEVENTH, by the grace of God, etc., to [*the names of three witnesses may be inserted*] greeting: We command you to attend before at , on day the day of 19 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the , and also to bring with you and produce at the time and place aforesaid [*specify documents to be produced*].

Witness, etc.

The particular documents required should be specified.

*Witness in Scotland or Ireland.*—When leave is given under s. 18 of the Arbitration Act, the forms will be the same as Nos. 1 and 3, but adding after the name of the witness, "Wherever you shall be in our United Kingdom," and at the foot of the writ, "Notice. Take notice that this writ was ordered to be issued by an order of his Majesty's High Court of Justice, dated day of , 19 , pursuant to the statutes, 17 & 18 Vict. c. 34, and 52 & 53 Vict. c. 49."

29. Every *subpoena* other than a *subpoena duces tecum* shall contain three names where necessary or required, but may contain any larger number of names.

The fee is 5s. for each *subpoena*, and if it contain more than three names for each set of three.

30. No more than three persons shall be included in one *subpoena duces tecum*, and the party suing out the same shall be at liberty to sue out a *subpoena* for each person if it shall be deemed necessary or desirable.

31. In the interval between the suing out and service of any *subpoena* the party suing out the same may correct any error in

the names of parties or witnesses, and may have the writ resealed upon leaving a correct *præcipe* of such *subpœna* marked with the words "altered and resealed," and signed with the name and address of the solicitor suing out the same.

**Sect. 8.**  
**NOTE.**

32. The service of a *subpœna* shall be effected by delivering a copy of the writ, and of the indorsement thereon, and at the same time producing the original writ.

33. Affidavits filed for the purpose of proving the service of a *subpœna* upon any defendant must state when, where, and how, and by whom, such service was effected.

34. The service of any *subpœna* shall be of no validity if not made within twelve weeks after the *teste* of the writ.

9. The time for making an award may from time to time be enlarged by order of the court or a judge, whether the time for making the award has expired or not.

Power to  
enlarge time  
for making  
award.

*Cf.* Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 15, repealed by this Act.

Under the Lands Clauses Consolidation Act, 1845, ss. 23 and 31, the arbitrators have twenty-one days in which to award, but this may be extended to three months. An umpire has three months from the date when the duty devolves upon him (s. 23, p. 51, note "For three months").

The provisions of s. 15 of the Common Law Procedure Act, 1854, as to giving the court power to enlarge the time for making an award were held to apply to arbitrations under the Lands Clauses Acts (*In re Dare Valley Rail. Co.* (1869), L. R. 4 Ch. 554), but the court declined to do so where there had been great delay (*S. C.*).

In the case of arbitrations under the Public Health Act, 1875, the court has power to extend the time beyond two months, the period limited by s. 180 (9), *ante*, p. 464 (*Knorles v. Bolton Corporation*, [1900] 2 Q. B. 253; and see notes to s. 180).

When the court has power to enlarge the time, it can do so after the award has been made, and the effect of the enlargement is the same as an enlargement by consent, namely, to ratify what had previously been done by the arbitrator without authority and to render the award valid (*Lord v. Lee* (1868), L. R. 3 Q. B. 404). It may be enlarged beyond the time mentioned in the agreement (*In re Denton and Strong* (1874), L. R. 9 Q. B. 117; *May v. Harcourt* (1884), 13 Q. B. D. 690).

By Order 64, r. 14A, of the Rules of the Supreme Court, it is provided that: "Where the time for making an award is enlarged, the enlargement shall be deemed to be for one month unless a different time is specified in the order."

"Court or a judge."—By Order 54, r. 12A, of the Rules of the Supreme Court, a master of the Supreme Court may exercise all the jurisdiction and powers conferred upon the court or a judge by the Arbitration Act, 1889, and see s. 21.

10.—(1) In all cases of reference to arbitration the court or a judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

Power to  
remit award.

(2) Where an award is remitted, the arbitrators or umpire shall,

**Sect. 10.** unless the order otherwise directs, make their award within three months after the date of the order.

"*The court or a judge*" includes a master. Rules of the Supreme Court, Order 54, r. 12A, and see s. 21. The application will be by summons before a master.

"**May remit the matters referred.**"—A similar power was given to the court by the Common Law Procedure Act, 1854, s. 8. Prior to that Act, the court could only refer back arbitrations when the submission contained a clause enabling them to do so. Under s. 8, however, all awards could be remitted whether the submission contained such a clause or not (*Mills v. Boryer* (1856), 3 Kay & J. 66), and in the case of an arbitration under the Lands Clauses Acts, GIFFARD, V.-C., referred the matter back to an arbitrator, who admitted he had made a mistake (*In re Dare Valley RAIL CO.* (1868), L. R. 6 Eq. 429). In construing s. 8 of the Common Law Procedure Act, 1854, it was laid down that that section did not authorise the court to send back an award on other grounds than those which before the Act would have induced them to set it aside, or to treat it as a nullity in an action brought to enforce it, or to remit it when the submission gave the court power to do so. See *Mills v. Boryer* (1856), 3 Kay & J. 66. These decisions govern the courts in construing this section of the Arbitration Act, and an award will not be set aside or remitted except upon the same grounds (*In re Keighley & Co. and Durant & Co.*, [1893] 1 Q. B. 405, 409). In that case the court remitted the award for the reconsideration of the arbitrator where it appeared that material evidence had been discovered since the making of the award which might have affected the arbitrator's decision (following *Barnard v. Wainwright* (1850), 19 L. J. Q. B. 423).

The Arbitration Act apparently gives the court power to set aside the award only in cases where there has been misconduct of the arbitrator or the award has been improperly obtained (s. 11, *infra*). The proper remedy in other cases would now appear to be to have the award remitted under this section. The grounds upon which the court will remit an award are four: (1) where the award is bad on the face of it; (2) where there has been misconduct on the part of the arbitrator; (3) where there has been an admitted mistake, and the arbitrator himself asks that the matter may be remitted; and (4) where additional evidence has been discovered after the making of the award; but the power of the court is not necessarily limited to them. See CHITTY, L.J., *In re Montgomery, Jones & Co. and Liebenthal & Co.* (1898), 78 L. T. 406, p. 408, and see s. 37 of the Lands Clauses Consolidation Act, 1845, note, "Setting aside and remitting awards," *ante*, p. 70.

For a case of admitted mistake, see *Re Stringer and Riley*, [1901] 1 K. B. 105. In that case it was also decided that after an arbitrator has made an award, he is *functus officio*, and cannot of his own motion treat the award as of no effect, and correct his mistake by making another award.

The court apparently has power also to remit the award to the arbitrator in order that he may state it in the form of a special case. See *Re Kirk-leatham Local Board and Stockton Waterworks Board Arbitration*, [1893] 1 Q. B. 375, p. 377. If a party *boni fide* asks an arbitrator on reasonable grounds, either to state a case for the opinion of the court, or delay his award so as to allow the party to apply to the court, and the arbitrator refuses, or by summarily making his award attempts to preclude the party from so applying, he is *prima facie* guilty of breach of duty to the party, and the court can either set aside the award under s. 11 (2), or remit it for reconsideration under this section (*In re Palmer and Hosken*, [1898] 1 Q. B. 131, a case in which the court remitted the award). The court cannot remit

because the arbitrator has made a mistake in law, and no case has been asked for during the reference (*Re Montgomery, Jones & Co. and Liebenthal & Co.* (1898), 78 L. T. 406).

This power of remitting the award was held to apply to arbitrations under the Public Health Act, 1875, s. 180 (*Warburton v. Haslingdon Local Board* (1879), 48 L. J. C. P. 451, approved in *Knorrles v. Bolton Corporation*, [1900] 2 Q. B. 253).

**Time for applying.**—There is no definite time for applying to have an award remitted, but it must be done within a reasonable time, or if not within a reasonable time, the party applying must show good grounds that it could not have been applied for sooner and within a reasonable time (*Leicester v. Glazebrook* (1879), 40 L. T. 883; *Warburton v. Haslingdon Local Board* (1879), 48 L. J. C. P. 451).

**"Within three months."**—The court has power to enlarge this period, but will not do so after unreasonable delay (*In re Dave Valley Rail. Co.* (1869), L. R. 4 Ch. 554).

**11.—(1)** Where an arbitrator or umpire has misconducted himself, the court may remove him. Power to set aside award

(2) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the court may set the award aside.

**"Has misconducted."**—See s. 25 of the Lands Clauses Consolidation Act, 1845, note, "Restraining arbitration," *ante*, p. 55.

If the arbitrators have misconducted themselves, application should be made either to restrain the arbitration or to have the award set aside. Until set aside, no proceedings can be taken to have the question determined (*Buche v. Billingham*, [1894] 1 Q. B. 107).

It has long been a general principle of the courts that an award will be set aside if the arbitrator has been corrupt or partial (*Morgan v. Mather* (1792), 2 Ves. jun. 15; *Tittenson v. Peat* (1747), 3 Atk. 529). Even if the arbitrator is guilty of no improper motive, but does not conduct the case according to legal rules, it may be set aside for misconduct (*Phipps v. Ingram* (1835), 3 Dowl. 669; *Banks v. Banks* (1835), 1 Gale, 46); and see Russell on "Arbitration," Part 3, chapter 9, s. 3. Thus, if an arbitrator receive evidence or information from one party in the absence of the other, the award will be set aside (*In re Gregson and Armstrong* (1894), 10 R. 408). It is also misconduct if an arbitrator refuse to state a special case when reasonably asked for, and also if he by summarily making the award endeavours to prevent the person applying from going to court to obtain such a case (*In re Palmer and Hosken*, [1898] 1 Q. B. 131). An arbitrator is not liable for an action of negligence (see *Chambers v. Goldthorpe*, [1901] 1 K. B. 624). Giving evidence on behalf of one of the parties in another case is not misconduct (*In re Haigh and London and North Western Rail. Co. and Great Western Rail. Co.*, [1896] 1 Q. B. 649). As to evidence of misconduct, see *In re Whiteley and Roberts Arbitration*, [1891] 1 Ch. 558. Refusal to alter date of arbitration because a principal witness was going abroad before then, was held not to afford a ground of removal (*Re Whittham and the Wrexham, etc. Rail. Co.* (1895), 39 Sol. J. 692).

**"The court."**—In the other sections, authority is given to a court or a judge, here it is only to a court; the application will, therefore, be by motion to a judge in court or to a divisional court. See s. 21, *post*. By the Rules of the Supreme Court, Order 52, r. 4, "Every notice of motion to set aside, remit, or enforce an award . . . shall state in general terms the

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NOTE.

**Sect. 11.****NOTE.**

grounds of the application ; and, where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion."

By Order 52, r. 5, there must be at least two clear days between the service of the notice of motion and the day named in the notice for hearing the motion, unless the court or judge give special leave.

*Time for application to set aside.*—Order 64, r. 14 of the Rules of the Supreme Court provides : "An application to set aside an award may be made at any time before the last day of the sittings next after such award has been made and published to the parties."

By r. 7 of the same Order, a court or judge has power to enlarge or abridge the time appointed by these rules, "upon such terms as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed." See *Re Oliver and Scott's Arbitration* (1889), 43 Ch. D. 310. Leave to enforce the award may be given although the time for setting it aside has not expired (Rules of the Supreme Court, Order 42, r. 31A, and see s. 12).

"**May set the award aside.**"—Generally, as to setting aside and remitting awards, see s. 37 of the Lands Clauses Consolidation Act, 1845, and notes thereto, p. 70. As to remitting awards, see also s. 10 of this Act, *supra*.

**Enforcing award.**

**12.** An award on a submission may, by leave of the court or a judge, be enforced in the same manner as a judgment or order of the same effect.

As to enforcing awards under the Lands Clauses Acts, see s. 36 of the Lands Clauses Consolidation Act, 1845, p. 68, and notes.

"**Court or a judge**" or a master.—Rules of the Supreme Court, Order 54, r. 12A, and see s. 21, p. 529. Application should be made by summons before a master in chambers. The applicant must produce before the master the original award (or a duplicate thereof), together with a copy, both to be verified by affidavit, the affidavit to be intitled "In the matter of an arbitration between A.B. and C.D." The verified award must on issuing for execution be filed in the writ department of the Central Office. See Practice Masters' Rules, 20.

"**Be enforced.**"—It is provided by Rules of the Supreme Court, Order 42, r. 31A, as follows :

"An award may with the leave of the court or a judge, and on such terms as may be just, be enforced at any time though the time for moving to set it aside has not elapsed."

As to the time for setting the award aside, see s. 11, *supra*.

Generally as to enforcing judgments or orders, see Rules of the Supreme Court, Orders 42—48. Order 42, r. 31, provides that : "Any judgment or order against a corporation wilfully disobeyed may, by leave of the court or a judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property."

**13—17. . . .**

Sections 13—17 deal with references under order of court, and are not applicable to this subject.

## GENERAL.

## Sect. 18.

18. (1) The court or a judge may order that a writ of subpoena ad testificandum or of subpoena duces tecum shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire, of a witness wherever he may be within the United Kingdom.

(2) The court or a judge may also order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before an official or special referee, or before any arbitrator or umpire.

Power to compel attendance of witness in any part of the United Kingdom, and to order habeas corpus to issue.

Generally as to summoning witnesses, see s. 8 and notes thereto, and see forms of subpoena there set out.

(1) The power is given to courts to compel the attendance of witnesses in courts not in their jurisdiction, but within the United Kingdom, by 17 & 18 Vict. c. 34, amended by the Judicature Act, 1884, s. 16, and the procedure under this section will be regulated thereby.

Where a large number of documents are produced by a witness not a party to the proceedings, the proper course is for an adjournment to be made to enable the parties to ascertain which of the documents are material. The parties are not entitled to put in the whole of the documents *en bloc*: or to ask the witness to produce the documents *seriatim* and question him thereon (*In re Maplin Sands* (1894), 71 L. T. 594).

The court or a judge includes master.—Order 54, r. 12A, and s. 21. The application should be made by summons to a master in chambers.

Costs.—See s. 20, *infra*, and s. 34 of the Lands Clauses Consolidation Act, 1845.

19. Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the court or a judge, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference.

Statement of case pending arbitration.

*Cf.* Common Law Procedure Act, 1854, s. 4, repealed by this Act.

The arbitrator or umpire may state the award in the form of a special case (s. 7 (b), p. 519).

This power can no doubt be exercised by the court or a judge in the case of references under the Lands Clauses Acts (s. 24, *infra*, and ss. 1 and 7).

“At any stage of the proceedings.”—This means until the proceedings shall have come to an end by a completed award (*Re Montgomery & Co. and Liebenthal* (1898), 78 L. T. 406). But if an order *nisi* calling upon the arbitrators to show cause why they should not be required to state a case for the opinion of the court is obtained, and the arbitrators draw up and sign their award on the same day before they have notice of the order, the jurisdiction of the court is not ousted and the order *nisi* may be made absolute (*The Tabernacle Permanent Building Society v. Knight*, [1892] A. C. 298). It would appear, however, that the court has power after the

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award has been completed to remit the matter under s. 10 to the arbitrator, ordering him to re-state his award in the form of a special case (*Re an Arbitration, Kirkleatham Local Board and Stockton Water Board*, [1893] 1 Q. B. 375; *In re Palmer & Co. and Hosken & Co.*, [1898] 1 Q. B. 131).

**"And shall, if so directed."**—This section impliedly confers on a party to an arbitration the right at any stage of the proceedings to apply to the court for an order directing the arbitrator to state in the form of a special case any question of law arising in the course of the reference. Any attempt to prevent the party so doing will be considered as misconduct unless the application be frivolous and made merely for the purpose of delay (*In re Palmer & Co. and Hosken & Co.*, [1898] 1 Q. B. 131). The court can order an arbitrator to state a special case on a question of law arising in the arbitration, although he has expressed no opinion on the point (*In re Spillers and Baker, Limited, and H. Leatham & Sons*, [1897] 1 Q. B. 312). A special case will be ordered as to the construction of a contract (*Re Nuttall and the Lynton, etc. Rail. Co.* (1899), 82 L. T. 17).

The application should be before a master in chambers. Rules of the Supreme Court, Order 53, r. 12A, and see s. 21, *infra*. It may be made *ex parte* for a rule *nisi* calling upon the arbitrators to show cause why they should not be required to state a case for the opinion of the court (*The Tabernacle Permanent Building Society v. Knight*, [1892] A. C. 298).

The usual procedure would be by summons. In the last cited case there was apparently pressure of time. The order directing a special case may be appealed (S. C.). The appeal in matters of practice and procedure from a judge shall be to the Court of Appeal (Judicature (Procedure) Act, 1894, s. 1 (3)).

**Costs.**—The order should provide, in cases where it is allowable, the terms as to costs as otherwise the court in determining a special case under this section will have no power over the costs (S. C., [1892] 2 Q. B. 613). See s. 20, *infra*.

**Appeal from decision on Special Case.**—It was decided that no appeal lay from the opinion of a court on a case stated under this section, the jurisdiction is consultative only (*In re Knight and Tabernacle Permanent Building Society*, [1892] 2 Q. B. 613). When the award is stated in the form of a special case under s. 7, it was held that an appeal does lie (*In re Kirkleatham Local Board and Stockton Waterworks Board*, [1893] 1 Q. B. 375, 380). By the Supreme Court of Judicature (Procedure) Act, 1894, s. 1 (b), it is provided that: No appeal shall lie without the leave of the judge, or of the Court of Appeal, from any interlocutory order or interlocutory judgment made or given by a judge, *except* in certain cases, including (*inter alia*) any order on a special case stated under the Arbitration Act, 1889.

**Procedure.**—After a special case has been stated, it should be set down at the Crown Office Department, if in the King's Bench Division, or filed at the Central Office after a judge has been assigned if in the Chancery Division.

**Costs.**

**20.** Any order made under this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

In arbitrations under the Lands Clauses Acts, there is a provision for costs in s. 34 of the Lands Clauses Consolidation Act, 1845. The costs of certain orders under this Act, not provided for by that section would pro-

bably fall under the above s. 20, as, for example, in the event of the promoters having the award set aside as being improperly obtained under s. 11 of the Arbitration Act.

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**NOTE.**

As to costs in special cases, see ss. 7 and 19, *supra*.

**21.** Provision may from time to time be made by rules of court for conferring on any master, or other officer of the Supreme Court, all or any of the jurisdiction conferred by this Act on the court or a judge. Exercise of powers by masters and other officers.

Order 54, r. 12A, of the Rules of the Supreme Court provides: "A master of the Supreme Court may exercise all the jurisdiction and powers conferred upon the court or a judge by the Arbitration Act, 1889."

Jurisdiction is given to a court or a judge by ss. 1, 3—6, 9, 10, 12—17, and 19. In these cases, therefore, the procedure will be by a summons before a master in chambers.

Section 11 gives jurisdiction to the court only, and the application will then be by motion to a judge in court or to a Divisional Court.

**22.** Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire shall be guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly. Penalty for perjury.

Where a person tampered with the evidence to be laid before arbitrators, by altering the quality of certain samples, he was held to be guilty of a misdemeanour at common law in having endeavoured to pervert the due course of law and justice, arbitrators being regarded as a tribunal administering public justice, and it did not matter whether or not the samples were in fact used before the arbitrators (*R. v. Vreones*, [1891] 1 Q. B. 360).

**23.** This Act shall, except as in this Act expressly mentioned, apply to any arbitration to which her Majesty the Queen, either in right of the Crown, or of the Duchy of Lancaster or otherwise, or the Duke of Cornwall, is a party, but nothing in this Act shall empower the court or a judge to order any proceedings to which her Majesty or the Duke of Cornwall is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer without the consent of her Majesty or the Duke of Cornwall, as the case may be, or shall affect the law as to costs payable by the Crown. Crown to be bound.

**24.** This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act. Application of Act to references under statutory powers.

**Sect. 24.****NOTE.**

This Act is not inconsistent with another Act regulating an arbitration if it adds to the enactments in that other statute. The object of the legislature was to add to the remedies open to the parties under a statutory arbitration, and the sole purpose of the exception in s. 24 was to prevent the application of the powers conferred upon the court by this Act to arbitrations under any statute whose provisions either expressly or by reasonable implication excluded the exercise of such powers. The test is whether you can read the provisions of this Act with the other without any conflict between the two (*Tabernacle Permanent Building Society v. Knight*, [1892] A. C. 298, 303, 306). As regards adding to submissions, see s. 25, and *In re Williams and Stepney*, [1891] 2 Q. B. 257.

As to application and construction of the Act, see note to the preamble, ante, p. 513, and *cf. Zelma Gold Mining Co. v. Hoskins*, [1895] A. C. 100, p. 103.

**Saving for  
pending  
arbitrations.**

**25.** This Act shall not affect any arbitration pending at the commencement of this Act, but shall apply to any arbitration commenced after the commencement of this Act under any agreement or order made before the commencement of this Act.

This Act commenced on January 1st, 1890 (s. 29).

"Any agreement or order" is a larger expression than a "submission" and includes it, and may include matters which could not technically be described as submissions (*In re Williams and Stepney*, [1891] 2 Q. B. 257).

This Act may add to a submission a number of things which are not in the submission, unless the intention that they should not be added is expressed in the submission or the contrary is provided (S. C. And see *In re Wilson and Eastern Counties Navigation Co.*, [1892] 1 Q. B. 81).

**Repeal.**

**26.**—(1) The enactments described in the second schedule to this Act are hereby repealed to the extent therein mentioned, but this repeal shall not affect anything done or suffered, or any right acquired or duty imposed or liability incurred, before the commencement of this Act, or the institution or prosecution to its termination of any legal proceeding or other remedy for ascertaining or enforcing any such liability.

(2) Any enactment or instrument referring to any enactment repealed by this Act shall be construed as referring to this Act.

This Act was intended to consolidate and amend. See note to the preamble.

The second schedule repeals the whole of 9 Will. 3, c. 15; ss. 39—41 of 3 & 4 Will. 4, c. 42; ss. 3—17 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125); ss. 57—59 of the Judicature Act, 1873; and part of s. 56 of the same Act, namely, from "subject to any rules of court" down to "as a judgment by the court," and the words "special referees or," and ss. 9—11 of the Judicature Act, 1884.

**27.** In this Act, unless the contrary intention appears— **Sect. 27.**

“Submission” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not. Definitions.

“Court” means her Majesty’s High Court of Justice.

“Judge” means a judge of her Majesty’s High Court of Justice.

“Rules of Court” means the rules of the Supreme Court made by the proper authority under the Judicature Acts.

*Submission.*—Section 25 of the Lands Clauses Consolidation Act, 1845, makes the appointment of an arbitrator thereunder “a submission to arbitration of the party by whom the same shall be made.” It is to be deemed a submission by consent. See s. 25, note, “A submission to arbitration,” *ante*, p. 56, and s. 1 of the Arbitration Act.

*Judge.*—By the Rules of the Supreme Court, Order 54, r. 12A, a master is empowered to exercise the jurisdiction and powers conferred upon the court or a judge by this Act. And see s. 21, *supra*.

**28.** This Act shall not extend to Scotland or Ireland. Extent.

**29.** This Act shall commence and come into operation on the first day of January, one thousand eight hundred and ninety. Commence-  
ment.

**30.** This Act may be cited as the Arbitration Act, 1889. Short title.

# THE HOUSING OF THE WORKING CLASSES ACT, 1890.

(53 &amp; 54 VICT. c. 70.)

*An Act to consolidate and amend the Acts relating to Artizans and Labourers Dwellings and the Housing of the Working Classes.*

[18th August 1890.]

This Act repealed and consolidated all the previous Acts dealing with artizans and labourers' dwellings and lodging-houses, except a few sections of the Housing of the Working Classes Act, 1885, which amend the general sanitary law, and the Working Classes Dwellings Act, 1890, an Act to facilitate gifts of land for dwellings of the working classes. It has been amended generally by the Housing of the Working Classes Act, 1894 (57 & 58 Vict. c. 78), which enables the local authority to borrow money for the purpose of purchasing land or of paying compensation under Part II. of this Act, by the Housing of the Working Classes Act, 1900 (63 & 64 Vict. c. 59), *post*, which chiefly amends Part III., and by the Housing of the Working Classes Act, 1903 (3 Edw. 7, c. 39), *post*, p. 636, which makes several important modifications. Amending Acts have also been passed as regards Scotland (59 & 60 Vict. c. 31), and as regards Ireland (56 & 57 Vict. c. 33, and 59 & 60 Vict. c. 11).

The Act is divided into seven parts. Part I. deals with unhealthy areas; Part II. with unhealthy dwelling-houses; and Part III. with working-class lodging-houses; Part IV. contains supplemental provisions; Parts V. and VI. apply the Act to Scotland and Ireland respectively; and Part VII. deals with repeals and temporary provisions. Parts I., II., and III. enable various local authorities to deal with unhealthy houses, and to provide others, and for the purposes of each of these Parts of the Act land may be taken compulsorily, and it should be noticed that the provisions as to compensation are somewhat different as regards each of these Parts of the Act.

Short title.

**1.** This Act may be cited as the Housing of the Working Classes Act, 1890.

## PART I.

### UNHEALTHY AREAS.

Definitions.

**2.** In this Part of this Act—

The expression “this Part of this Act” includes any confirming Act, and

The expression “the Acts relating to nuisances” means—

As respects the county of London and city of London, the Nuisances Removal Acts as defined by the Sanitary Act, 1866 (*a*), and any Act amending these Acts; and

As respects any urban sanitary district in England, the Public Health Acts ; **Sect. 2.**  
and in the case of any of the above-mentioned areas, includes any local Act which contains any provisions with respect to nuisances in that area.

(a) Now the Public Health (London) Act, 1891 (54 & 55 Vict. c. 71). For general definitions in the Act, see ss. 92 and 93, *post*.

**3.** This Part of this Act shall not apply to rural sanitary districts. Application of Part I. of Act.

The local authority, for the purposes of this Part of the Act, is in boroughs and urban districts the borough or urban district council. In London, in the city, it is now the Common Council, and in the county, the London County Council.

This Part of the Act consolidates and mainly re-enacts the Artizans and Labourers Dwellings Improvement Acts of 1875 (38 & 39 Vict. c. 36), of 1879 (42 & 43 Vict. c. 63), and of 1882 (45 & 46 Vict. c. 54).

*Scheme by Local Authority.*

**4, 5.** . . .

Sections 4 and 5 provide that where an official representation is made by the medical officer of health that a certain area is unhealthy, and that an improvement scheme should be made, the local authority shall, if satisfied of the fact, proceed to make such a scheme. Any number of such areas may be included in one improvement scheme. If the local authority do not make a scheme, they must send a notification to the confirming authority, who may direct a local inquiry. See s. 10. The confirming authority may in such case order a scheme, and compel the local authority to carry it out (Housing of the Working Classes Act, 1903, s. 4). For definition of "confirming authority" see s. 8 (2) of this Act, *post*, p. 536. If the representation affects not more than ten houses in London, the matter is to be treated as under Part II. See s. 72. See the subject discussed fully in Allan's Housing of the Working Classes Acts.

**6.**—(1) The improvement scheme of a local authority shall be accompanied by maps, particulars, and estimates, and Requisites of improvement scheme of local authority.

- (a) may exclude any part of the area in respect of which an official representation is made, or include any neighbouring lands, if the local authority are of opinion that such exclusion is expedient or inclusion is necessary for making their scheme efficient for sanitary purposes ; and
- (b) may provide for widening any existing approaches to the unhealthy area or otherwise for opening out the same for the purposes of ventilation or health ; and
- (c) shall provide such dwelling accommodation, if any, for the working classes displaced by the scheme as is required to comply with this Act ; and
- (d) shall provide for proper sanitary arrangements.

**Sect. 6.**

(2) The scheme shall distinguish the lands proposed to be taken compulsorily.

(3) The scheme may also provide for the scheme or any part thereof being carried out and effected by the person entitled to the first estate of freehold in any property comprised in the scheme or with the concurrence of such person, under the superintendence and control of the local authority, and upon such terms and conditions to be embodied in the scheme as may be agreed upon between the local authority and such person.

**Maps, etc.**—Instructions as to what are required are published annually by the Local Government Board in August.

**"Neighbouring lands."**—These lands should be distinguished in the scheme from the unhealthy area, as, by s. 21, the compensation payable in respect of premises situated within an unhealthy area is to be determined according to the principles there laid down. Neighbouring lands are probably to be valued according to the principles laid down under the Lands Clauses Act (see note to s. 63, *ante*, p. 96), and under s. 21 (1), *infra*, p. 542. They may be taken compulsorily if included among the lands proposed to be taken compulsorily.

**"Working classes displaced."**—Section 11 requires that an improvement scheme shall in London provide for the accommodation of at least as many persons of the working class as may be displaced in the area comprised therein. The accommodation may be in the vicinity, and not within the area. The confirming authority may dispense with this proviso in certain cases, and may allow the accommodation to be provided at a distance from the area, and out of London such accommodation need only be provided if the confirming authority so require.

By s. 23, the local authority may appropriate any land belonging to them for this purpose, or purchase it by agreement. The land may also be purchased for this purpose under Part III.

As to the effect upon the power to take land of a proviso in a special Act that the local authority shall prove that such accommodation has been provided elsewhere, see *Spencer v. Metropolitan Board of Works* (1882), 22 Ch. D. 142.

**"The first estate of freehold."**—As to the execution of the scheme, see s. 12, *infra*; and as to the local authority contracting with the owner of the first estate of freehold to carry out the scheme, see sub-s. (6) of that section.

### *Confirmation of Scheme.*

Publication  
of notices.

**7.** Upon the completion of an improvement scheme the local authority shall—

- (a) Publish, during three consecutive weeks [*in the month of September, or October, or November,*] in some one and the same newspaper circulating within the district of the local authority, an advertisement stating the fact of a scheme having been made, the limits of the area comprised therein, and naming a place within such area or in the vicinity thereof where a copy of the scheme may be seen at all reasonable hours; and

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- (b) [*During the month next following the month in which such advertisement is published*] serve a notice on every owner or reputed owner, lessee or reputed lessee, and occupier of any lands proposed to be taken compulsorily, so far as such persons can reasonably be ascertained, stating that such lands are proposed to be taken compulsorily for the purpose of an improvement scheme, and in the case of any owner or reputed owner, lessee or reputed lessee, requiring an answer stating whether the person so served dissents or not in respect of taking such lands ;
- (c) Such notice shall be served —
- (i) By delivery of the same personally to the person required to be served, or if such person is absent abroad, or cannot be found, to his agent, or if no agent can be found, then by leaving the same on the premises ; or,
  - (ii) By leaving the same at the usual or last known place of abode of such person as aforesaid ; or,
  - (iii) By post addressed to the usual or last known place of abode of such person.
- (d) One notice addressed to the occupier or occupiers without naming him or them, and left at any house, shall be deemed to be a notice served on the occupier or on all the occupiers of any such house.

*"The local authority shall publish."*—In paragraph (a) the words "in the month of September, or October, or November" are to be omitted (Housing of the Working Classes Act, 1903, s. 5 (1), *post*).—In assessing the compensation for premises under this Part of the Act, any addition to or improvement of the premises, except for repair, made after the date of this publication shall not be included (s. 21 (1), *supra*).

*"Serve a notice."*—The words in italics in paragraph (b) are repealed, and for them are substituted the words "During the thirty days next following the date of the last publication of the advertisement" (Housing of the Working Classes Act, 1903, s. 5 (2), *post*).—There is a provision similar to paragraph (b) in s. 176 (2) of the Public Health Act, 1875, *ante*, p. 458. Under that section it has been held that such a notice creates no legal relationship between the parties, as a notice to treat does under s. 18 of the Lands Clauses Consolidation Act, 1845 (*Burges v. Bristol Sanitary Authority* (1886), 50 J. P. 455) ; and such notice does not affect the right of an owner as against adjoining owners who may interfere with his easements before his premises are taken (*Dye v. Patman* (1897), 62 J. P. 135) ; and as to the effect of a notice to treat, see *ante*, p. 35. Notices need not be served on persons who have easements over the land proposed to be taken (*Swainston v. Finn and Metropolitan Board of Works* (1883), 48 L. T. 634 ; *Badham v. Maris* (1881), 45 L. T. 579). As the owner, however, by s. 21, is not entitled to compensation for any addition or improvement made to his property, except in the way of repair, after the publication mentioned in this section, it would appear that his rights are to some extent affected. The notice that would correspond to the notice to treat is apparently that mentioned in Article 6, sub-s. (2), of the Second

**Sect. 7.****NOTE.**

Schedule. See *Wilkins v. Mayor of Birmingham* (1883), 25 Ch. D. 78, a case under the somewhat similar provision in the schedule to the Artizans Dwellings Improvement Act, 1875, which was afterwards amended to the present form. Section 21 states the time at which the interests are to be valued.

As to forms of notices and advertisements, see s. 27, *infra*; and as to dispensing with notices, see s. 28.

Making and  
confirmation  
of provisional  
order.

**8.**—(1) Upon compliance with the foregoing provisions with respect to the publication of an advertisement and the service of notices, the local authority shall present a petition, if it relates to any part of the county or city of London, to a Secretary of State, and if it relates to any other place, to the Local Government Board, praying that an order may be made confirming such scheme.

(2) The petition shall be accompanied by a copy of the scheme, and shall state the names of the owners or reputed owners, lessees or reputed lessees, who have dissented in respect of the taking their lands, and shall be supported by such evidence as the Secretary of State or Local Government Board, according to the circumstances of the case (in this Part of this Act referred to as the confirming authority), may from time to time require.

(3) If, on consideration of the petition and on proof of the publication of the proper advertisements and the service of the proper notices, the confirming authority think fit to proceed with the case, they shall direct a local inquiry to be held in, or in the vicinity of, the area comprised in the scheme, for the purpose of ascertaining the correctness of the official representation made as to the area and the sufficiency of the scheme provided for its improvement, and any local objections to be made to such scheme.

(4) After receiving the report made upon such inquiry, the confirming authority may make a provisional order declaring the limits of the area comprised in the scheme and authorising such scheme to be carried into execution.

(5) Such provisional order may be made either absolutely or with such conditions and modifications of the scheme as the confirming authority may think fit, so that no addition be made to the lands proposed in the scheme to be taken compulsorily, and it shall be the duty of the local authority to serve a copy of any provisional order so made in the manner and upon the persons in which and upon whom notices in respect of lands proposed to be taken compulsorily are required by this Part of this Act to be served, except tenants for a month or a less period than a month.

(6) A provisional order made in pursuance of this section shall not be of any validity unless and until it has been confirmed by Act of Parliament; and it shall be lawful for the confirming

Sect. 8.

authority, as soon as conveniently may be, to obtain such confirmation, and any Act confirming any provisional order made in pursuance of this Part of this Act, with such modifications as may seem fit to Parliament, shall be a Public General Act of Parliament, and is in this Part of this Act referred to as the confirming Act.

(7) The confirming authority may make such order as they think fit in favour of any person whose lands were proposed by the scheme to be taken compulsorily for the allowance of the reasonable costs, charges, and expenses properly incurred by him in opposing such scheme.

(8) All costs, charges, and expenses incurred by the confirming authority in relation to any provisional order under this Part of this Act shall, to such amount as the confirming authority think proper to direct, and all costs, charges, and expenses of any person to such amount as may be allowed to him by the confirming authority in pursuance of the aforesaid power, shall be deemed to be an expense incurred by the local authority under this Part of this Act, and shall be paid to the confirming authority and to such person respectively, in such manner and at such times and either in one sum or by instalments as the confirming authority may order, with power for the confirming authority to direct interest to be paid at such rate not exceeding five pounds in the hundred by the year as the confirming authority may determine, upon any sum for the time being due in respect of such costs, charges, and expenses as aforesaid.

(9) Any order made by the confirming authority in pursuance of this section may be made a rule of a superior court, and be enforced accordingly.

*"Confirming authority."*—Sub-sections (1) and (2) define the expression "confirming authority" which is frequently used throughout this Part. Under s. 2 of the Housing of the Working Classes Act, 1903, any powers and duties of a secretary of state may be transferred to the Local Government Board by an order in council.

*Provisional Order.*—The order need not now be confirmed by Parliament in certain cases mentioned in s. 5 (2) of the Housing of the Working Classes Act, 1903, *post*. The confirming authority have also power to modify schemes to meet objections before confirmation (s. 6 of same Act, *post*).

## 9. . . .

By s. 9, if a bill is referred to a committee of Parliament, the committee has power to give costs to either party as they may think just.

o                      o                      o                      o                      o

### *Execution of Scheme by Local Authority.*

12.—(1) When the confirming Act authorising any improvement scheme of a local authority under this Part of this Act has

Duty of local authority to carry scheme

**Sect. 12.**  
when confirmed, into execution.

been passed by Parliament, it shall be the duty of that authority to take steps for purchasing the lands required for the scheme, and otherwise for carrying the scheme into execution as soon as practicable.

(2) They may sell or let all or any part of the area comprised in the scheme to any purchasers or lessees for the purpose and under the condition that such purchasers or lessees will, as respects the land so purchased by or leased to them, carry the scheme into execution; and in particular they may insert in any grant or lease of any part of the area provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the buildings, and prohibiting the division of buildings, and any addition to or alteration of the character of buildings without the consent of the local authority, and for the re-vesting of the land in the local authority, or their re-entry thereon, on breach of any provision in the grant or lease.

(3) The local authority may also engage with any body of trustees, society, or person, to carry the whole or any part of such scheme into effect upon such terms as the local authority may think expedient, but the local authority shall not themselves, without the express approval of the confirming authority, undertake the rebuilding of the houses or the execution of any part of the scheme, except that they may take down any or all of the buildings upon the area, and clear the whole or any part thereof, and may lay out, form, pave, sewer, and complete all such streets upon the land purchased by them as they may think fit, and all streets so laid out and completed shall thenceforth be public streets, repairable by the same authority as other streets in the district.

(4) Provided that in any grant or lease of any part of the area which may be appropriated by the scheme for the erection of dwellings for the working classes the local authority shall impose suitable conditions and restrictions as to the elevation, size, and design of the houses, and the extent of the accommodation to be afforded thereby, and shall make due provision for the maintenance of proper sanitary arrangements.

(5) If the local authority erect any dwellings out of funds to be provided under this Part of this Act, they shall, unless the confirming authority otherwise determine, sell and dispose of all such dwellings within ten years from the time of the completion thereof.

(6) The local authority may, where they think it expedient so to do, without themselves acquiring the land, or after or subject to their acquiring any part thereof, contract with the person

entitled to the first estate of freehold in any land comprised in an improvement scheme for the carrying of the scheme into effect by him in respect of such land (a). **Sect. 12**

(a) The scheme may provide for this to be done. See s. 6 (3).

**13.** If within five years after the removal of any buildings on the land set aside by any scheme authorised by a confirming Act as sites for working men's dwellings, the local authority have failed to sell or let such land for the purposes prescribed by the scheme, or have failed to make arrangements for the erection of the said dwellings, the confirming authority may order the said land to be sold by public auction or public tender, with full power to fix a reserve price, subject to the conditions imposed by the scheme, and to any modifications thereof which may be made in pursuance of this Part of this Act, and to a special condition on the part of the purchaser to erect upon the said land dwellings for the working classes, in accordance with plans to be approved by the local authority, and subject to such other reservations and regulations as the confirming authority may deem necessary. Completion of scheme on failure by local authority.

The period within which the compulsory powers may be exercised is three years from the passing of the confirming Act. See s. 20, *infra*; and see s. 123 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 249.

**14.** The local authority shall, not less than thirteen weeks before taking any fifteen houses or more, make known their intention to take the same by placards, handbills, or other general notices placed in public view upon or within a reasonable distance of such houses, and the local authority shall not take any such houses until they have obtained a certificate of a justice of the peace that it has been proved to his satisfaction that the local authority have made known, in manner required by this section, their intention to take such houses. Notice to occupiers by placards.

See also the provision as to giving notice of the appointment of an arbitrator by placards and handbills in Article 6 of the schedule, *post*.

As to the meaning of "taking," see *Spencer v. Metropolitan Board of Works* (1882), 22 Ch. D. 142, a case under a similar provision in a local Act.

**15.—(1)** The confirming authority, on application from the local authority, and on its being proved to their satisfaction that an improvement can be made in the details of any scheme authorised by a confirming Act, may permit the local authority to modify any part of their improvement scheme which it may Power of confirming authority to modify authorised scheme.

**Sect. 15.**

appear inexpedient to carry into execution, but any part of the scheme respecting the provision of dwelling accommodation for persons of the working class, when so modified, shall be such as might have been inserted in the original scheme.

(2) A statement of any modifications permitted to be made in any part of an improvement scheme in pursuance of this section shall be laid by the confirming authority before both Houses of Parliament as soon as practicable after the permission is given, if Parliament be then sitting, and if not, within one month after the next meeting of Parliament.

Provided always, that if such modification requires a larger public expenditure than that sanctioned by the former scheme, or the taking of any property otherwise than by agreement, or affects injuriously other property in a manner different to that proposed in the former scheme without the consent of the owner and occupier of any such property, the modification must be made by a provisional order to be confirmed by Act of Parliament in the manner provided by this Part of this Act on the completion of an improvement scheme.

For definition of confirming authority, see s. 8 (1), (2).

As to modification of scheme pending sanction, see *Housing of the Working Classes Act, 1903, s. 6, post, p. 638.*

**16—19. . . .**

Sections 16—19 provide for inquiries to be held by the confirming authority as to unhealthy areas, on the application of twelve or more ratepayers, if the medical officer make default in respect thereof.

*Acquisition of Land.*

Acquisition  
of land.

**20.** The clauses of the Lands Clauses Acts, with respect to the purchase and taking of lands otherwise than by agreement shall not, except to the extent set forth in the Second Schedule to this Act, apply to any lands taken in pursuance of this Part of this Act, but save as aforesaid the said Lands Clauses Acts, as amended by the provisions contained in the said schedule, shall regulate and apply to the purchase and taking of lands, and shall for that purpose be deemed to form part of this Part of this Act in the same manner as if they were enacted in the body thereof; subject to the provisions of this Part of this Act and to the provisions following: that is to say,

- (i) This Part of this Act shall authorise the taking by agreement of any lands which the local authority may require for the purpose of carrying into effect the scheme authorised by any confirming Act, but it shall authorise the

taking by the exercise of any compulsory powers of such lands only as are proposed by the scheme in the confirming Act to be taken compulsorily : Sect. 20.

- (ii) In the construction of the Lands Clauses Acts, and the provisions in the Second Schedule to this Act, this Part of this Act shall be deemed to be the special Act, and the local authority shall be deemed to be the promoters of the undertaking; and the period after which the powers for the compulsory purchase or taking of lands shall not be exercised shall be three years after the passing of the confirming Act.

*Cf.* the repealed provision in s. 19 of the Artizans and Labourers Dwellings Improvement Act, 1875.

**"With respect to the purchase," etc.**—The words "with respect to the purchase and taking of lands otherwise than by agreement," form the heading to ss. 16—68 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 26. These sections are only incorporated to the extent set forth in the Second Schedule. All the other clauses are incorporated as amended by the same schedule.

Section 133, which requires the promoters of an undertaking to make good the deficiency in the poor's rate and land tax, is, therefore, incorporated, and the local authority must make good that deficiency (*Vestry of St. Leonard, Shoreditch v. London County Council* (1895), 11 T. L. R. 420, reported on another point in [1895] 2 Q. B. 104; and see notes to s. 133, *ante*, p. 265).

Similarly, it was held under the same provisions in s. 19 of the Artizans and Labourers Dwellings Improvement Act, 1875, that s. 121 of the Lands Clauses Consolidation Act, 1845, which deals with tenants having no greater interest than from year to year, was incorporated in that Act (*Wilkins v. Mayor of Birmingham* (1883), 25 Ch. D. 78).

Section 78, *post*, provides that tenants whose contract of tenancy is for less than a year, may receive an allowance for the expenses of removal.

As s. 68 is not incorporated, there is no general provision giving compensation for injurious affection to land when no land has been taken. Section 22 of this Act, however, provides for the giving of compensation in respect of the extinction of rights of way and other rights or easements over the land taken. See note thereto, *infra*, p. 544.

**"Provisions contained in the said schedule."**—The schedule, besides providing a method of assessing the compensation different from that under the Lands Clauses Acts, gives the arbitrator power to apportion rentcharges and rents payable in respect of leases (Article 11). He is also given power to settle the compensation in respect of omitted interests (Article 13).

Section 92 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 219, which provides that a person shall not be required to sell a part only of any house, building, or manufactory, is amended for the purposes of this Act, and the local authority will not be obliged to purchase the whole if the arbitrator decide that part can be taken without material damage to the whole (Article 12).

Articles 14—23 deal with the payment of purchase-money.

Articles 24 and 25 deal with entry upon lands before the settlement of the compensation, and certain provisions other than those in s. 85 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 205.

**"The special Act."**—As "this Part of this Act" is to be deemed the special Act, it should be noted that s. 2 provides that the expression "this Part of this Act" includes any confirming Act.

**Sect. 21.**

Special provision as to compensation.

**21.**—(1) Whenever the compensation payable in respect of any lands or of any interests in any lands proposed to be taken compulsorily in pursuance of this Part of this Act requires to be assessed—

- (a) The estimate of the value of such lands or interests shall be based upon the fair market value, as estimated at the time of the valuation being made of such lands, and of the several interests in such lands, due regard being had to the nature and then condition of the property, and the probable duration of the buildings in their existing state, and to the state of repair thereof, without any additional allowance in respect of the compulsory purchase of an area or of any part of an area in respect of which an official representation has been made, or of any lands included in a scheme which, in the opinion of the arbitrator, have been so included as falling under the description of property which may be constituted an unhealthy area under this Part of this Act ; and
- (b) In such estimate any addition to or improvement of the property made after the date of the publication in pursuance of this Part of this Act of an advertisement stating the fact of the improvement scheme having been made shall not (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repair) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made so as to increase the amount of compensation to be paid for the lands ; and

(2) On the occasion of assessing the compensation payable under any improvement scheme in respect of any house or premises situate within an unhealthy area evidence shall be receivable by the arbitrator to prove—

- (1st) That the rental of the house or premises was enhanced by reason of the same being used for illegal purposes or being so overcrowded as to be dangerous or injurious to the health of the inmates ; or
- (2ndly) That the house or premises are in such a condition as to be a nuisance within the meaning of the Acts relating to nuisances, or are in a state of defective sanitation, or are not in reasonably good repair ; or
- (3rdly) That the house or premises are unfit, and not reasonably capable of being made fit, for human habitation ;

and, if the arbitrator is satisfied by such evidence, then the compensation— Sect. 21.

- (a) Shall in the first case so far as it is based on rental be based on the rental which would have been obtainable if the house or premises were occupied for legal purposes and only by the number of persons whom the house or premises were under all the circumstances of the case fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates ; and
- (b) Shall in the second case be the amount estimated as the value of the house or premises if the nuisance had been abated, or if they had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of abating the nuisance, or putting them into such condition or repair, as the case may be ; and
- (c) Shall in the third case be the value of the land, and of the materials of the buildings thereon.

*"Requires to be assessed."*—It is the amount that is to be assessed. As in other cases, the arbitrator has no jurisdiction to decide as to the claimant's legal right to compensation (*Wilkins v. Mayor of Birmingham* (1883), 25 Ch. D. 78). And see note to s. 23 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 50.

*"Without any additional allowance."*—There is no provision in the Lands Clauses Acts requiring that any additional allowance shall be given in respect of compulsory purchase, nor is there any legal decision to that effect. Surveyors, however, in determining the compensation have been in the habit of adding a certain percentage to the amount ascertained as the value of the property when calculated from tables commonly in use, and this addition has been made for what has been loosely called compulsory purchase. Strictly, the law has nothing to do with the way in which an arbitrator arrives at the amount. Its function is to define the subject to be assessed. Most probably, the extra percentage added by surveyors to what they calculated as the ordinary market value was added, because in arriving at the ordinary value, the person in possession, who may be anxious to remain in possession, is not regarded as a possible purchaser. The market value thus obtained is the value to a person desiring to sell. The true market value in the case of a compulsory purchase can only be ascertained by contemplating the owner as a possible purchaser, and considering the price he would pay to remain in possession. The intention of this section would appear to be that the owner is to receive the market value calculated upon the principle that he is desirous to sell the property. The question as to whether any extra sum ought to be given on compulsory purchase under the Lands Clauses Acts was raised, but not decided, in *Jervis v. Newcastle and Gateshead Water Co.* (1897), 13 T. L. R. 14, 312 ; but the true measure of compensation under these Acts is the value of the land to the owner, and this may in cases be quite independent of the market value.

Under this section it has been held that in ascertaining the compensation to be paid to the lessors of a tied public-house, taken under a scheme, the covenant tying the house must be taken into consideration in calculating the market value (*In re Chandler's Wiltshire Brewery Co., Limited, and the London County Council*, [1903] 1 K. B. 569).

This method of ascertaining the market value extends, it would appear, only to land within the unhealthy area, and not to neighbouring lands,

**Sect. 21.****NOTE.**

which may be taken for the purposes of the scheme, as to which, see s. 6, *ante*, p. 63. Under the similar provision in the Artizans and Labourers Dwellings Improvement Act, 1875, s. 19 (2), it was held in an Irish case that as to premises not situated within the unhealthy area, compensation for compulsory purchase might be awarded (*Mayor of Dublin v. Dowling* (1880). L. R. Ir. 6 Q. B. 502).

In the same case it was decided as regards premises, whether within or without the unhealthy area, that in ascertaining their fair market value an allowance should be made for goodwill annexed thereto, as in cases under the Lands Clauses Acts. See note, *ante*, p. 101.

Tenants for less than a year may be allowed a reasonable sum for expenses of removing (s. 78, *infra*).

In a case under a local sanitary Act, where houses were taken which had been declared to be unfit for habitation, and the compensation clause was almost identical with sub-s. (1) (a) of this section, but with the addition of the words "and all circumstances affecting such value," after "repair thereof," the arbitrator assessed the compensation upon the value of the land and of the materials for building as is now provided in sub-s. (2) (c) of this section. The court, however, decided that he was wrong in so doing, and that he ought to have first considered what was the fair market value, what the buildings would sell for, and from that make deductions in respect of their sanitary condition and state of repair. The fact that a declaration had been made that they ought to be demolished was not admissible as evidence; but everything relevant to the question of value was to be considered (*Gough v. Mayor of Liverpool* (1891), 65 L. T. 512). The words "and all circumstances affecting such value" occurred in the Artizans Dwellings Improvement Act, 1875, s. 19, but were struck out by the amending Act of 1882 (45 & 46 Vict. c. 54, s. 4).

"**Upon the date of the publication.**"—This is the publication of an advertisement as provided in s. 7, *ante*, p. 534. In the absence of such a provision, the owner of premises in the area would be entitled to add to and improve them after the provisional order had been obtained, and to receive compensation in respect thereof (*Higgins v. Mayor of Dublin* (1891), 28 L. R. Ir. Q. B. 484).

Extinction  
of rights of  
way and  
other ease-  
ments.

**22.** Upon the purchase by the local authority of any lands required for the purpose of carrying into effect any scheme, all rights of way, rights of laying down or of continuing any pipes, sewers, or drains on, through, or under such lands, or part thereof, and all other rights or easements in or relating to such lands, or any part thereof, shall be extinguished, and all the soil of such ways, and the property in the pipes, sewers, or drains, shall vest in the local authority, subject to this provision, that compensation shall be paid by the local authority to any persons or bodies of persons proved to have sustained loss by this section, and such compensation shall be determined in the manner in which compensation for lands is determinable under this Part of this Act, or as near thereto as circumstances admit.

This section is identical with s. 20 of the Artizans Dwellings Improvement Act, 1875 (38 & 39 Vict. c. 36).

Under that section it was held that it extended to ancient lights over the land purchased. When land is purchased under this Act it is freed from easements of every kind, for which compensation must be paid to persons

proved to have sustained loss. It is not necessary that the loss should happen at the time when the land is purchased. If it happen afterwards, the person who sustains the loss will be entitled to claim compensation when the loss can be proved (*Badham v. Marris* (1881), 52 L. J. Ch. 237 n). Following the decision in that case, PEARSON, J., held that no action lay to restrain a local authority from removing a house in such a way as to interfere with a right to support, and that the remedy, if any, was to claim compensation (*Swairston v. Finn and the Metropolitan Board of Works* (1883), 52 L. J. Ch. 235).

Sect. 22.

NOTE.

In a case where the owner of land had at the time when land was purchased under this Act enjoyed an uninterrupted access of light and air over the land purchased, and that access of light and air was not interfered with for ten years later, so that he had enjoyed it for twenty years, it was held that the lessee of the local authority was entitled to erect buildings which would interfere therewith, as the object of the section was to extinguish inchoate rights as well as complete rights. The court also expressed an opinion that these inchoate rights were a matter for compensation under this section (*Barlow v. Ross* (1890), 24 Q. B. D. 381).

The claim should be made when the injury is sustained. If it is disputed, it will be settled under Article 7 of Sched. II. by the arbitrator appointed. If there is no arbitrator, the local authority should apply to the confirming authority to appoint one under Article 4 of the schedule.

**23.** A local authority may, for the purpose of providing accommodation for persons of the working classes displaced by any improvement scheme, appropriate any lands for the time being belonging to them which are suitable for the purpose, or may purchase by agreement any such further lands as may be convenient.

Application of lands for accommodation of working classes.

Lands may be acquired under Part III. and appropriated to this purpose. See s. 4 of the Housing of the Working Classes Act, 1900 (63 & 64 Vict. c. 59).

In the case of purchase by agreement, the Lands Clauses Acts, to the extent incorporated by s. 20, *ante*, will apply.

## 24—26. . . .

Sections 24 and 25 contain provisions to enable local authorities to obtain money for the purpose of carrying out this Act. They are amended by s. 1 of the Housing of the Working Classes Act, 1903.

Section 26 makes provision in case of the absence of the medical officer of health.

**27.** The confirming authority may by order prescribe the forms of advertisements and notices under this Part of this Act; it shall not be obligatory on any persons to adopt such forms, but the same, when adopted, shall be deemed sufficient for all the purposes of this Part of this Act.

Power of confirming authority as to advertisements and notices.

Forms of advertisements and notices have been prescribed. See Allan's Housing of the Working Classes Acts, 2nd ed., pp. 187 *et seq.*

**Sect. 28.**

Power of  
confirming  
authority to  
dispense with  
notices in  
certain cases.

**28.** The confirming authority may, on the consideration of any petition of a local authority for an order confirming a scheme, dispense with the publication of any advertisement, or the service of any notice, proof of which publication or service is not given to them as required by this Part of this Act, where reasonable cause is shown to their satisfaction why such publication or service should be dispensed with, and such dispensation may be made by the confirming authority, either unconditionally or upon such condition as to the publication of other advertisements and the service of other notices or otherwise as the confirming authority may think fit, due care being taken by the confirming authority to prevent the interest of any person being prejudiced by the fact of the publication of any advertisement or the service of any notice being dispensed with in pursuance of this section.

For definition of confirming authority, see s. 8, (1). (2).

**PART II.****UNHEALTHY DWELLING-HOUSES.***Preliminary.*

- Definitions :** **29.** In this Part of this Act, unless the context otherwise requires—
- “Street.” The expression “street” includes any court, alley, street, square, or row of houses :
- “Dwelling-house.” The expression “dwelling-house” means any inhabited building, and includes any yard, garden, outhouses, and appurtenances belonging thereto or usually enjoyed therewith, and includes the site of the dwelling-house as so defined :
- “Owner.” The expression “owner,” in addition to the definition given by the Lands Clauses Acts, includes all lessees or mortgagees of any premises required to be dealt with under this Part of this Act, except persons holding or entitled to the rents and profits of such premises for a term of years, of which twenty-one years do not remain unexpired :
- “Closing order.” The expression “closing order” means an order prohibiting the use of premises for human habitation made under the enactments set out in the Third Schedule in this Act.

This Part of the Act (ss. 29—52) deals with the provisions which were contained in the Artizans and Labourers Dwellings Act, 1868 (31 & 32 Vict. c. 130), which was amended by Acts of 1879 (42 & 43 Vict. c. 64, and 43 Vict. c. 8) ; 1882 (45 & 46 Vict. c. 54, Part 2) ; and 1885 (48 & 49 Vict.

c. 72). It can be put in force in towns and urban districts by town or urban district councils, in rural districts by rural district councils, in the city of London by the Common Council, and in the county of London by the Borough Councils. It applies to every sanitary district. Sect. 29.  
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NOTE.

“Owner.”—See the definition in s. 3 of the Lands Clauses Consolidation Act, 1845, *ante*.

The Artizans and Labourers Dwellings Act, 1868, contained the same definition of “owner.” The tenant of premises under a lease, expiring in less than a year, but who was also assignee of a lease of the same premises for twenty-one years, commencing at the expiration of the first lease, was under that Act held to have had such an interest in the premises at the time when proceedings were initiated by service of notices upon him as to make him “owner”; the date of the services of the notices being the point of time to be looked at in determining ownership for the purposes of the Act, (*R. v. Vestry of St. Marylebone* (1887), 20 Q. B. D. 415).

In applying the enactments mentioned in Schedule III. of the Act, the person to be treated as “owner” is the person defined as above, and not as defined in the statutes from which these enactments are taken (*Osborne v. The Skinners' Co.* (1891), 60 L. J. M. C. 156).

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Sections 30—37 deal with houses which, from their unhealthy state, are unfit for habitation. The local authority may obtain a closing order requiring such houses to be closed until they are made fit for habitation. If they are not made fit, the local authority may obtain an order for their demolition. The procedure to obtain a closing order has been simplified by s. 8 of the Housing of the Working Classes Act, 1903. There is no provision for compensation, except that s. 32 (3), provides as follows :

### 32. . . .

(3) Where a closing order has been made as respects any dwelling-house, the local authority shall serve notice of the order on every occupying tenant of the dwelling-house, and within such period as is specified in the notice, not being less than seven days after the service of the notice, the order shall be obeyed by him, and he and his family shall cease to inhabit the dwelling-house, and in default he shall be liable to a penalty not exceeding twenty shillings a day during his disobedience to the order. Provided that the local authority may make to every such tenant such reasonable allowance on account of his expenses in removing, as may have been authorised by the court making the closing order, which authority the court is hereby authorised to give, and the amount of the said allowance shall be a civil debt due from the owner of the dwelling-house to the local authority, and shall be recoverable summarily.

Section 10 of the Housing of the Working Classes Act, 1903, *post*, confers further powers on the local authority to obtain possession of the house.

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35.—(1) Any person aggrieved by an order of the local authority under this Part of this Act, may appeal against the same to a court of quarter sessions, and no work shall be done nor proceedings Appeal  
against order  
of local  
authority.

**Sect. 35.** taken under any order until after the appeal is determined or ceases to be prosecuted ; and section thirty-one of the Summary Jurisdiction Act, 1879, respecting appeals from courts of summary jurisdiction to courts of quarter sessions shall apply with the necessary modifications as if the order of the local authority were an order of a court of summary jurisdiction.

42 & 43 Vict.  
c. 49.

(2) Provided that—

- (a) Notice of appeal may be given within one month after notice of the order of the local authority has been served on such person ;
- (b) The court shall, at the request of either party, state the facts specially for the determination of a superior court, in which case the proceedings may be removed into that court.

This section is applicable to appeals in respect of obstructive buildings (s. 38 (3)).

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### *Obstructive Buildings.*

Power  
to local  
authority  
to purchase  
houses for  
opening  
alleys, etc.

**38.**—(1) If a medical officer of health finds that any building within his district, although not in itself unfit for human habitation, is so situate that by reason of its proximity to or contact with any other buildings it causes one of the following effects, that is to say,

- (a) It stops ventilation, or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation or dangerous or injurious to health ; or
- (b) It prevents proper measures from being carried into effect for remedying any nuisance injurious to health or other evils complained of in respect of such other buildings ;

in any such case, the medical officer of health shall represent to the local authority the particulars relating to such first-mentioned building (in this Act referred to as “an obstructive building”) stating that in his opinion it is expedient that the obstructive building should be pulled down.

(2) Any four or more inhabitant householders of a district may make to the local authority of the district a representation as respects any building to the like effect as that of the medical officer under this section.

(3) The local authority on receiving any such representation as above in this section mentioned shall cause a report to be made to

them respecting the circumstances of the building and the cost of pulling down the building and acquiring the land, and on receiving such report shall take into consideration the representation and report, and if they decide to proceed, shall cause a copy of both the representation and report to be given to the owner of the lands on which the obstructive building stands, with notice of the time and place appointed by the local authority for the consideration thereof ; and such owner shall be at liberty to attend and state his objections, and after hearing such objections the local authority shall make an order either allowing the objection or directing that such obstructive building shall be pulled down, and such order shall be subject to appeal in like manner as an order of demolition of the local authority under the foregoing provisions of this Part of this Act (*a*).

(4) Where an order of the local authority for pulling down an obstructive building is made under this section and either no appeal is made against the order, or an appeal is made and either fails or is abandoned, the local authority shall be authorised to purchase the lands on which the obstructive building is erected in like manner as if they had been authorised by a special Act to purchase the same ; and for the purpose of such purchase the provisions of the Lands Clauses Acts, with respect to the purchase and taking of lands otherwise than by agreement (*b*), shall be deemed to be incorporated in this Part of this Act (subject nevertheless to the provisions of this Part of this Act) (*c*), and for the purpose of the provisions of the Lands Clauses Acts this Part of this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and such lands may be purchased at any time within one year, after the date of the order, or if it was appealed against after the date of the confirmation.

(5) The owner of the lands may within one month after notice to purchase the same is served upon him declare that he desires to retain the site of the obstructive building and undertake either to pull down or to permit the local authority to pull down the obstructive building, and in such case the owner shall retain the site and shall receive compensation from the local authority for the pulling down of the obstructive building.

(6) The amount of such compensation, and also the amount of any compensation to be paid on the purchase of any lands under this section, shall in case of difference be settled by arbitration in manner provided in this Part of this Act.

(7) Where the local authority is empowered to purchase land

**Sect. 38.** compulsorily, it shall not be competent for the owner of a house or manufactory to insist on his entire holding being taken, where part only is proposed to be taken as obstructive, and where such part proposed to be taken can, in the opinion of the arbitrator to whom the question of disputed compensation is submitted, be severed from the remainder of the house or manufactory without material detriment thereto, provided that compensation may be awarded in respect of the severance of the part so proposed to be taken in addition to the value of that part (*d*).

(8) Where in the opinion of the arbitrator the demolition of an obstructive building adds to the value of such other buildings as are in that behalf mentioned in this section, the arbitrator shall apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase in value of the other buildings amongst such other buildings respectively, and the amount apportioned to each such other building in respect of its increase in value by reason of the demolition of such obstructive building shall be deemed to be private improvement expenses incurred by the local authority in respect of such building, and such local authority may, for the purpose of defraying such expenses, make and levy improvement rates on the occupier of such premises accordingly; and the provisions of the Public Health Acts relating to private improvement expenses and to private improvement rates shall, so far as circumstances admit, apply accordingly in the same manner as if such provisions were incorporated in this Act.

(9) If any dispute arises between the owner or occupier of any building (to which any amount may be apportioned in respect of private improvement expenses) and the arbitrator by whom such apportionment is made, such dispute shall be settled by two justices in manner provided by the Lands Clauses Acts, in cases where the compensation claimed in respect of lands does not exceed fifty pounds (*e*).

(10) Where the owner retains the site or any part thereof, no house or other building or erection which will be dangerous or injurious to health, or which will be an obstructive building within the meaning of this section, shall be erected upon such site or any part thereof; and if any house, building, or erection is erected on the site contrary to the provisions of this section the local authority may at any time order the owner to abate or alter the said house, building, or erection; and in the event of non-compliance with such order may, at the expense of the owner thereof, abate or alter the same.

(11) Where the lands are purchased by the local authority the local authority shall pull down the obstructive building, or such part thereof as may be obstructive within the meaning of this section, and keep as an open space the whole site, or such part thereof as may be required to be kept open for the purpose of remedying the nuisance or other evils caused by such obstructive building, and may, with the assent of the Local Government Board, and upon such terms as that Board think expedient, sell such portion of the site as is not required for the purpose of carrying this section into effect.

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(12) A local authority may, where they so think fit, dedicate any land acquired by them under the authority of this section as a highway or other public place.

(a) Section 35, *ante*, p. 547.

(b) Sections 16—68, *ante*, pp. 26—110.

(c) See s. 41, *post*, p. 554.

(d) *Cf.* s. 92 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 219 ; and see the Second Schedule hereto, Art. 12, and notes thereto.

(e) See ss. 22 and 24, *ante*, pp. 48, 52.

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*, s. 6 (2), a parish council is given the same power of making any complaint or representation as to unhealthy dwellings or obstructive buildings as is conferred on inhabitant householders under this Act, but without prejudice to the powers of such householders.

### *Scheme for Reconstruction.*

**39.**—(1) In any of the following cases, that is to say—

*Scheme for area comprising houses closed by closing order.*

(a) Where an order for the demolition of a building has been made in pursuance of this Part of this Act, and it appears to the local authority that it would be beneficial to the health of the inhabitants of the neighbouring dwelling-houses if the area of the dwelling-house of which such building forms part were used for all or any of the following purposes, that is to say, either—

- (i) Dedicated as a highway or open space, or
- (ii) Appropriated, sold, or let for the erection of dwellings for the working classes, or
- (iii) Exchanged with other neighbouring land which is more suitable for the erection of such dwellings, and on exchange will be appropriated, sold, or let for such erection ; or

(b) Where it appears to the local authority that the closeness, narrowness, and bad arrangement or bad condition of any buildings, or the want of light, air, ventilation, or

## Sect. 39.

proper conveniences, or any other sanitary defect in any buildings is dangerous or prejudicial to the health of the inhabitants either of the said buildings or of the neighbouring buildings, and that the demolition or the reconstruction and re-arrangement of the said buildings or of some of them is necessary to remedy the said evils, and that the area comprising those buildings and the yards, outhouses, and appurtenances thereof, and the site thereof, is too small to be dealt with as an unhealthy area under Part I. of this Act (*a*),

the local authority shall pass a resolution to the above effect and direct a scheme to be prepared for the improvement of the said area.

(2) Notice of the scheme may at any time after the preparation thereof be served in manner provided in Part I. of this Act with respect to notices of lands proposed to be taken compulsorily under a scheme made in pursuance of that Part of this Act, on every owner or reputed owner, lessee or reputed lessee, and occupier of any part of the area comprised in the scheme, so far as those persons can reasonably be ascertained (*b*).

(3) The local authority shall, after service of such notice, petition the Local Government Board for an order sanctioning the scheme, and the Board may cause a local inquiry to be held, and, if satisfied on the report of such local inquiry that the carrying into effect of the scheme either absolutely, or subject to conditions or modifications would be beneficial to the health of the inhabitants of the said buildings or of the neighbouring dwelling-houses, may by order sanction the scheme with or without such conditions or modifications.

(4) Upon such order being made, the local authority may purchase by agreement the area comprised in the scheme as so sanctioned, and if they agree for the purchase of the whole area, the order, save so far as it provides for the taking of land otherwise than by agreement, shall take effect without confirmation. If they do not so agree, the order shall be published by the local authority by inserting a notice thereof in the London Gazette, and by serving notice thereof on the owners of every part of the area.

(5) Any owner may, within two months after such publication, petition the Local Government Board against the order, and if such petition is presented and is not withdrawn, the order shall be provisional unless it is confirmed by Act of Parliament.

(6) If the Local Government Board are satisfied that the order

has been duly published, and that two months after such publication have expired, and that either a petition has not been presented, or if presented has been withdrawn, they shall confirm the order, and thereupon such order shall come into operation, and have effect as if it were enacted by this Act.

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(7) The order may incorporate the provisions of the Lands Clauses Acts, and for the purpose of those provisions this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and the area shall be acquired within three years after the date of the confirmation of the order: Provided that the amount of compensation shall, in case of difference, be settled by arbitration in manner provided by this Part of this Act.

(8) The provisions of Part I. of this Act relating to costs to be awarded in certain cases by a committee of either House of Parliament, to the duty of a local authority to carry a scheme when confirmed into execution, to the completion of a scheme on failure by a local authority (*c*), and to the extinction of rights of way and other easements, shall, with the necessary modifications, apply for the purpose of any scheme under this section in like manner as if it were a scheme under Part I. of this Act (*d*).

(9) The Local Government Board, on being satisfied by the local authority that an improvement can be made in the details of any scheme under this section, may by order permit the local authority to modify any part of the scheme which it may appear inexpedient to carry into execution: Provided that—

- (a) If the order sanctioning the scheme was confirmed by Parliament, a statement of such modification shall be laid by the Local Government Board before both Houses of Parliament as soon as practicable; and
- (b) In any case, if the modification requires a larger expenditure than that sanctioned by the original scheme, or authorises the taking of any property otherwise than by agreement, or injuriously affects any property in a manner different from that proposed in the original scheme, without the consent of the owner or occupier of such property, notice of the order authorising the modification shall be published, and the order may be petitioned against and shall be subject to confirmation in like manner as if it were an order sanctioning an original scheme under this section (*e*).

**Sect. 39.****NOTE.**

(a) As to when an unhealthy area is too small to be dealt with under Part I., see ss. 72 and 73, *infra*.

(b) Section 7, *ante*, p. 534.

(c) Section 9.

(d) Section 22, *ante*, p. 544.

(e) *Cf.* s. 15, *ante*, p. 539.

*The scheme.*—Neighbouring lands may now be included in a scheme under Part II. by virtue of s. 7 of the Housing of the Working Classes Act, 1903, *post*. As to the power of the confirming authority to modify schemes before confirmation in order to meet objections, see s. 6 of the same Act, *post*.

Provisions  
for accommo-  
dation of  
persons of  
the working  
classes

**40.** The Local Government Board shall in any order sanctioning a scheme under this Part of this Act require the insertion in the scheme of such provisions (if any) for the dwelling accommodation of persons of the working classes displaced by the scheme as seem to the Board required by the circumstances.

### *Settlement of Compensation.*

Provisions  
as to arbi-  
tration.

**41.** In all cases in which the amount of any compensation is, in pursuance of this Part of this Act, to be settled by arbitration, the following provisions shall have effect : (namely,)

(1) The amount of compensation shall be settled by an arbitrator to be appointed and removable by the Local Government Board.

(2) In settling the amount of any compensation—

(a) The estimate of the value of the dwelling-house shall be based on the fair market value as estimated at the time of the valuation being made of such dwelling-house, and of the several interests in such dwelling-house, due regard being had to the nature and then condition of the property and the probable duration of the buildings in their existing state, and to the state of repair thereof, and without any additional allowance in respect of compulsory purchase ; and

(b) The arbitrator shall have regard to and make an allowance in respect of any increased value which, in his opinion, will be given to other dwelling-houses of the same owner by the alteration or demolition by the local authority of any buildings.

(3) Evidence shall be receivable by the arbitrator to prove—

(1st) That the rental of the dwelling-house was enhanced by reason of the same being used for illegal purposes or being so overcrowded as to be dangerous or injurious to the health of the inmates ; or

- (2ndly) That the dwelling-house is in a state of defective sanitation, or is not in reasonably good repair ; or
- (3rdly) That the dwelling-house is unfit, and not reasonably capable of being made fit, for human habitation ; and, if the arbitrator is satisfied by such evidence, then the compensation—
- (a) shall in the first case so far as it is based on rental be based on the rental which would have been obtainable if the dwelling-house was occupied for legal purposes and only by the number of persons whom the dwelling-house was under all the circumstances of the case fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates ; and
  - (b) shall in the second case be the amount estimated as the value of the dwelling-house if it had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of putting it into such condition or repair ; and
  - (c) shall in the third case be the value of the land, and of the materials of the buildings thereon.
- (4) On payment or tender to the person entitled to receive the same of the amount of compensation agreed or awarded to be paid in respect of the dwelling-house, or on payment thereof in manner prescribed by the Lands Clauses Acts, the owner shall, when required by the local authority, convey his interest in such dwelling-house to them, or as they may direct ; and in default thereof, or if the owner fails to adduce a good title to such dwelling-house to the satisfaction of the local authority, it shall be lawful for the local authority, if they think fit, to execute a deed poll in such manner and with such consequences as are mentioned in the Lands Clauses Acts.
- (5) Sections thirty-two, thirty-three, thirty-five, thirty-six, and thirty-seven of the Lands Clauses Consolidation Act, 1845, shall apply, with any necessary modifications, to an arbitration and to an arbitrator appointed under this Part of this Act (a). 8 & 9 Vict.  
c. 18.
- (6) The arbitrator may, by one award, settle the amount or amounts of compensation payable in respect of all or any of the dwelling-houses included in one or more order or orders made by the local authority ; but he may, and, if the local authority request him so to do, shall, from

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time to time make an award respecting a portion only of the disputed cases brought before him.

- (7) In the event of the death, removal, resignation, or incapacity, refusal, or neglect to act of any arbitrator before he shall have made his award, the Local Government Board may appoint another arbitrator, to whom all documents relating to the matter of the arbitration which were in the possession of the former arbitrator shall be delivered.
- (8) The arbitrator may, where he thinks fit, on the request of any party by whom any claim has been made before him, certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority.
- (9) The arbitrator shall not give such certificate where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of such claim before the appointment of the arbitrator, and need not give such certificate to any party where he considers that such party neglected, after due notice from the local authority, to deliver to that authority a statement in writing within such time, and containing such particulars respecting the compensation claimed, as would have enabled the local authority to make a proper offer of compensation to such party before the appointment of the arbitrator.
- (10) If within seven days after demand the amount so certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from the local authority with interest at the rate of five per cent. per annum for any time during which the same remains unpaid after such seven days as aforesaid.
- (11) The award of the arbitrator shall be final and binding on all parties.

(a) *Ante*, pp. 61, 62, 67—69.

*The amount of compensation.*—Neighbouring lands may now be included in schemes under Part II. of this Act; but the provision of sub-s. (2) of this section as to the exclusion of any additional allowance in respect of compulsory purchase shall not apply to them (*Housing of the Working Classes Act, 1903, s. 7, post, p. 638*).

*Cf.* the similar provisions in Part I. of this Act, ss. 20 and 21 and Schedule II., and notes thereto. As s. 39 provides that the order of the Local Government Board may incorporate the Lands Clauses Acts, and as s. 38 incorporates the compulsory clauses, except as modified by this Act, the procedure will be according to these Acts with the necessary modifications.

Sub-sections (5), (7), (8), (10), and (11) of this section now apply to arbitrations under Part III. of this Act (Housing of the Working Classes Act, 1900, s. 7, *post*).

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**NOTE.**

**49.**—(1) Where the owner of any dwelling-house and his residence or place of business are known to the local authority, it shall be the duty of the clerk of the local authority, if the residence or place of business is within the district of such local authority, to serve any notice by this Part of this Act required to be served on the owner, by giving it to him, or for him, to some inmate of his residence or place of business within the district; and in any other case it shall be the duty of the clerk of the local authority to serve the notice by post in a registered letter addressed to the owner at his residence or place of business.

(2) Where the owner of the dwelling-house or his residence or place of business is not known to, and after diligent inquiry cannot be found by the local authority, then the clerk of the local authority may serve the notice by leaving it, addressed to the owner, with some occupier of the dwelling-house, or if there be not an occupier, then by causing it to be put up on some conspicuous part of the dwelling-house.

(3) Notice served upon the agent of the owner shall be deemed notice to the owner.

Notices should be in writing and signed by the clerk (s. 86). They can now be served under this Part of the Act by sending them by post in a registered letter (Housing of the Working Classes Act, 1903, s. 13, *post*).

**50.** Where in any proceedings under this Part of this Act it is necessary to refer to the owner of any dwelling-house, it shall be sufficient to designate him as the "owner" thereof without name or further description.

Description of owner in proceedings.

### PART III.

#### WORKING CLASS LODGING-HOUSES.

##### *Adoption of Part III.*

**53.**—(1) The expression "lodging-houses for the working classes" when used in this Part of this Act shall include separate houses or cottages for the working classes, whether containing one or several tenements, and the purposes of this Part of this Act shall include the provision of such houses and cottages.

Definition of purposes of Labouring Classes Lodging Houses Acts.

(2) The expression "cottage" in this Part of this Act may include a garden of not more than half an acre, provided that the estimated annual value of such garden shall not exceed three pounds.

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Adoption of  
this Part of  
Act.

**54.** This Part of this Act may be adopted in the several districts mentioned in the First Schedule to this Act by the local authorities in that behalf in that schedule mentioned. . . .

The proviso to this section has been repealed by the Housing of the Working Classes Act, 1900, s. 2 (3), *post*.

The adoption here mentioned may be done apparently by resolution merely. It may be adopted by city and borough councils and by urban district councils, in the county of London by the London County Council, in the city of London by the Common Council, while the metropolitan boroughs may also adopt this Part concurrently with the county council (London Government Act, 1899 (62 & 63 Vict. c. 14), s. 5 (2)). In rural districts this Part may be adopted by a rural district council, with the consent of the county council, under the provisions contained in s. 2 of the Housing of the Working Classes Act, 1900, and if the rural district council makes default, the county council may adopt (s. 6).

**55. . . .**

Section 55 contained the procedure by which rural district councils might adopt this Part. The section has been wholly repealed, and a simpler procedure substituted by ss. 2 and 6 of the Housing of the Working Classes Act, 1900, *post*.

*Execution of Part III. by Local Authority.*

Powers  
of local  
authority.

**56.** Where this Part of this Act has been adopted in any district, the local authority shall have power to carry it into execution (subject to the provisions of this Part of this Act with respect to rural sanitary authorities), and for that purpose may exercise the same powers whether of contract or otherwise as in the execution of their duties in the case of the London County Council under the Metropolis Management Act, 1855, and the Acts amending the same, or in the case of sanitary authorities under the Public Health Acts, or in the case of the Commissioners of Sewers under the Acts conferring powers on such Commissioners.

18 & 19 Vict.  
c. 120.  
38 & 39 Vict.  
c. 55.

The Common Council now take the place of the Commissioners of Sewers in the city of London (60 & 61 Vict. c. cxxxiii.). As to the power of the latter to contract, see 11 & 12 Vict. c. clxii., which power is transferred to the Common Council. Borough councils in London contract under their general powers.

Acquisition  
of land.  
38 & 39 Vict.  
c. 55.

**57.**—(1) Land for the purposes of this Part of this Act may be acquired by a local authority in like manner as if those purposes were purposes of the Public Health Act, 1875, and sections one hundred and seventy-five to one hundred and seventy-eight, both inclusive, of that Act (relating to the purchase of lands), shall apply accordingly, and shall for the purposes of this Part of this Act extend to London in like manner as if the Commissioners of Sewers and London County Council respectively were a local

authority in the said sections mentioned, and a Secretary of State were substituted for the Local Government Board.

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(2) The local authority may, if they think fit, contract for the purchase or lease of any lodging-houses for the working classes already, or hereafter to be built and provided.

(3) The local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the land is situate, appropriate, for the purposes of this Part of this Act, any lodging-houses so purchased or taken on lease, and any other land which may be for the time being vested in them, or at their disposal.

The purposes for which land may be acquired are somewhat extended by s. 11 of the Housing of the Working Classes Act, 1903, *post*.

Sections 175—178 of the Public Health Act, 1875, will be found *ante*, pp. 457—462. Section 176 incorporates the Lands Clauses Acts, and it enables the local authority to obtain compulsory powers by applying for a provisional order. There appears to be no definition as to what is to be the special Act, and as to what persons are to be the promoters of the undertaking under this Part of the Act. Probably the provision as to this in s. 316 of the Public Health Act, 1875, *ante*, p. 470, with the necessary modifications will apply. In this connection the following remarks of Lord BLACKBURN, in the *Mayor of Portsmouth v. Smith* (1885), 10 App. Cas. 364, p. 371, are important: "Where a single section of an Act of Parliament is introduced into another Act, I think it must be read in the sense which it bore in the original Act from which it is taken, and that consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section meant, though those other sections are not incorporated in the new Act. I do not mean that if there was in the original Act a section not incorporated, which came by way of a proviso or exception on that which is incorporated, that should be referred to. But all others, including the interpretation clause, if there be one, may be referred to."

When land is taken compulsorily, the manner of assessing the compensation is not to be governed solely by the Lands Clauses Acts, for by s. 7 of the Housing of the Working Classes Act, 1900, *post*, it is provided that the assessment shall be by a single arbitrator, and s. 41 (5), (7), (8), (10), (11) of this Act, *ante*, p. 555, are to apply. The Lands Clauses Acts will therefore only apply in so far as they are not at variance with these provisions.

Inasmuch as the Lands Clauses Acts are incorporated, the local authority taking land for the purposes of this Part of the Act, will be liable to make good the deficiency in the poor's rate under s. 133 of the Lands Clauses Act, *ante*, p. 265 (*Vestry of St. Leonard's, Shoreditch v. London County Council* (1895), 72 L. T. 802).

Councils other than rural district councils can acquire land outside their district (s. 1 of the Housing of the Working Classes Act, 1900; see *post*).

As to London, see note to last section. The powers and duties of a secretary of state may be transferred to the Local Government Board by order in council (Housing of the Working Classes Act, 1903. s. 2).

Local authority may purchase existing lodging-houses.

**58.** The trustees of any lodging-houses for the working classes for the time being provided in any district by private subscriptions or otherwise, may, with the consent of a majority

**Sect. 58.** of the committee or other persons by whom they were appointed trustees, sell or lease the lodging-houses to the local authority of the district, or make over to them the management thereof.

Erection of  
lodging-  
houses.

**59.** The local authority may, on any land acquired or appropriated by them, erect any buildings suitable for lodging-houses for the working classes, and convert any buildings into lodging-houses for the working classes, and may alter, enlarge, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

As to leasing the land for the purpose of erecting such lodging-houses, see s. 5 of the Housing of the Working Classes Act, 1900, *post*.

Sale and  
exchange  
of lands.

**60.** A local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the land is situate, sell any land vested in them for the purposes of this Part of this Act, and apply the proceeds in or towards the purchase of other land better adapted for those purposes, and may in like manner and with the like consent exchange any land so vested in them for land better adapted to the purposes of this Part of this Act, either with or without paying or receiving any money for equality of exchange.

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## PART IV.

### SUPPLEMENTAL.

Limit of  
area to be  
dealt with  
on official  
represent-  
ation.

**72.** Where an official representation made to the London County Council in pursuance of Part I. of this Act relates to not more than ten houses, the London County Council shall not take any proceedings on such representation, but shall direct the medical officer of health making the same to represent the case to the local authority under Part II. of this Act, and it shall be the duty of the local authority to deal with such case in manner provided by that Part of this Act.

Provisions  
as to Parts  
of Act  
under which  
reports are  
to be dealt  
with in  
county of  
London.

**73.—(1)** In either of the following cases :

- (a) Where a medical officer of health has represented to any local authority in the county of London under Part II. of this Act that any dwelling-houses are in a condition so

dangerous or injurious to health, as to be unfit for human habitation, or that the pulling down of any obstructive buildings would be expedient, and such authority resolve that the case of such dwelling-houses or buildings is of such general importance to the county of London that it should be dealt with by a scheme under Part I. of this Act; or

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- (b) Where an official representation as mentioned in Part I. of this Act has been made to the London County Council in relation to any houses, courts, or alleys within a certain area, and that council resolve that the case of such houses, courts, or alleys is not of general importance to the county of London and should be dealt with under Part II. of this Act;

such local authority or council may submit such resolution to a Secretary of State, and thereupon the Secretary of State may appoint an arbitrator, and direct him to hold a local inquiry, and such arbitrator shall hold such inquiry, and report to the Secretary of State as to whether, having regard to the size of the area, to the number of houses to be dealt with, to the position, structure, and sanitary condition of such houses, and of the neighbourhood thereof, and to the provisions of Part I. of this Act, the case is either wholly or partially of any and what importance to the county of London, with power to such arbitrator to report that in the event of the case being dealt with under Part II. of this Act, the London County Council ought to make a contribution in respect of the expense of dealing with the case.

(2) The Secretary of State, after considering the report of the arbitrator, may, according as to him seems just, decide that the case shall be dealt with either under Part II. of this Act, or under Part I. of this Act, and the medical officer of health or other proper officer shall forthwith make the representation necessary for proceedings in accordance with such decision.

The powers and duties of a Secretary of State may be hereafter transferred to the Local Government Board by Order in Council (Housing of the Working Classes Act, 1903, s. 2).

**74.**—(1) The Settled Land Act, 1882, shall be amended as follows:

- (a) Any sale, exchange, or lease of land in pursuance of the said Act, when made for the purpose of the erection on such land of dwellings for the working classes, may be made at such price, or for such consideration,

Amend-  
ment of  
45 & 46 Vict.  
c. 38, as  
regards  
erection of  
buildings  
for working  
classes.

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or for such rent, as having regard to the said purpose, and to all the circumstances of the case, is the best that can be reasonably obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.

- (b) The improvements on which capital money may be expended, enumerated in section twenty-five of the said Act, and referred to in section thirty of the said Act, shall, in addition to cottages for labourers, farm servants, and artizans, whether employed on the settled land or not, include any dwellings available for the working classes, the building of which in the opinion of the court is not injurious to the estate.

(2) Any body corporate holding land may sell, exchange, or lease the land for the purpose of the erection of dwellings for the working classes at such price, or for such consideration, or for such rent as having regard to the said purpose and to all the circumstances of the case is the best that can reasonably be obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.

As to the application of purchase money or compensation received by tenants for life, see *ante*, pp. 136—150.

As to persons selling who are under incapacity, see s. 9 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 21.

\* \* \* \* \*

Power to local authority to enter and value premises.

**77.** Any person authorised by the local authority may at all reasonable times of the day, on giving twenty-four hours' notice in writing to the occupier of his intention so to do, enter any dwelling-house, premises, or building which the local authority are authorised to purchase compulsorily under Part I. or Part II. of this Act for the purpose of surveying and valuing such dwelling-house, premises, or building.

*Cf.* s. 84 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 203.

Compensation to tenants for expense of removal.

**78.** Where a building or any part of a building purchased by the local authority in pursuance of a scheme under Part I. or Part II. of this Act is not closed by a closing order, and is occupied by any tenant whose contract of tenancy is for less than a year, the local authority, if they require him to give up possession of such building or part for the purpose of pulling

down the building, may make to the said tenant a reasonable allowance on account of his expenses in removing. **Sect. 78.**

Where the premises are to be closed, see s. 32 (3), *ante*, p. 547.

\* \* \* \* \*

**86.**—(1) An order in writing made by a local authority under this Act shall be under their seal and authenticated by the signature of their clerk or his lawful deputy. **Orders, notices, etc.**

(2) A notice, demand, or other written document proceeding from the local authority under this Act shall be signed by their clerk or his lawful deputy.

**87.** Any notice, summons, writ or other proceeding at law or otherwise required to be served on a local authority in relation to carrying into effect the objects or purposes of this Act, or any of them, may be served upon that authority by delivering the same to their clerk, or leaving the same at his office with some person employed there. **Service of notice, etc., on the local authority.**

They may also be sent by post in a registered letter (Housing of the Working Classes Act, 1903, s. 13 (2), *post*).

**88.**—(1) A person shall not vote as member of a local authority or county council or any committee thereof upon any resolution or question which is proposed or arises in pursuance of Part I. or Part II. of this Act, if it relates to any dwelling-house, building, or land in which he is beneficially interested. **Prohibition on persons interested voting as members of local authority.**

(2) If any person votes in contravention of this section he shall, on summary conviction, be liable for each offence to a fine not exceeding fifty pounds; but the fact of his giving the vote shall not invalidate any resolution or proceeding of the local authority or county council.

\* \* \* \* \*

**92.** In this Act, unless the context otherwise requires, “district,” “local authority,” and “local rate,” mean respectively the areas, bodies of persons, and rates specified in the table contained in the First Schedule to this Act, but in Part III. of this Act and in reference to any power given by that part, or any act to be done in pursuance thereof shall mean such area, bodies of persons, and rate only in cases where that Part of this Act is adopted or being adopted. **Definition of local authority, districts, local rate.**

**Sect. 93.****Definitions :**

"Land."

"Sanitary district."

"Sanitary authority."

"Urban and rural sanitary authority";  
"contributory place."

"Superior court."

"County of London."

**93.** In this Act, unless the context otherwise requires—

The expression "land" includes any right over land :

The expression "sanitary district" means the district of a sanitary authority :

The expression "sanitary authority" means an urban sanitary authority or a rural sanitary authority :

The expressions "urban sanitary authority" and "rural sanitary authority" and "contributory place" have respectively the same meanings as in the Public Health Act, 1875 :

The expression "superior court" means the Supreme Court :

The expression "county of London," except where specified to be the administrative county of London, means the county of London exclusive of the city of London.

\* \* \* \*

**SECOND SCHEDULE.****Section 20. PROVISIONS WITH RESPECT TO THE PURCHASE AND TAKING OF LANDS IN ENGLAND OTHERWISE THAN BY AGREEMENT, AND OTHERWISE AMENDING THE LANDS CLAUSES ACTS.**

These provisions are taken from the schedules to the Artizans Dwellings Improvement Acts, 1875, 1879, and 1882.

*Deposit of Maps and Plans.*1—4.  
38 & 39 Vict.  
c. 36.  
Sched.

(1) The local authority shall as soon as practicable after the passing of the confirming Act cause to be made out, and to be signed by their clerk or some other principal officer appointed by them, maps and schedules of all lands proposed to be taken compulsorily, (which lands are hereinafter referred to as the scheduled lands,) together with the names, so far as the same can be reasonably ascertained, of all persons interested in such lands as owners or reputed owners, lessees or reputed lessees, or occupiers.

(2) The maps made by the local authority shall be upon such scale and be framed in such manner as may be prescribed by the confirming authority (a).

(3) The local authority shall deposit such maps and schedules at the office of the confirming authority (a), and shall deposit and keep copies of such maps and schedules at the office of the local authority.

(a) The confirming authority is in the city and county of London the Secretary of State, in other places the Local Government Board (s. 8 (1) and (2), *ante*, p. 536).

*Appointment of Arbitrator.*

(4) After such deposit at the office of the confirming authority as aforesaid, it shall be lawful for the confirming authority, upon the application of the local authority, to appoint an arbitrator between

the local authority, and the persons interested in such of the scheduled lands, or lands injuriously affected by the execution of such scheme, so far as compensation for the same has not been made the subject of agreement. Sched. —

*Proceedings on Arbitration.*

(5) Before any arbitrator enters upon any inquiry he shall, in the presence of a justice of the peace, make and subscribe the following declaration ; that is to say, 45 & 46 Vict.  
c. 54.  
Sched. (1)  
a—f.

“ I, A. B., do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Housing of the Working Classes Act, 1890.

A. B.

“ Made and subscribed in the presence of .”

And such declaration shall be annexed to the award when made ; and if any arbitrator, having made such declaration, wilfully act contrary thereto, he shall be guilty of a misdemeanor.

*Cf.* the similar proviso in s. 33 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 62, and see the notes thereto.

(6) As soon as an arbitrator has been appointed as aforesaid, the confirming authority shall deliver to him the maps and schedules deposited at their office, and the local authority shall publish once in each of three successive weeks the following particulars :

- (1) The appointment of the arbitrator ; and
- (2) The deposit at the office of the local authority of the copies of such maps and schedules as aforesaid, with a description of the situation of such office, and a statement of the time at which such copies may be inspected by any person desirous of inspecting the same.

Such publication shall be made not only by advertisement, but also by placards and handbills affixed in conspicuous places on or near the lands to be taken, and also by leaving a notice thereof at each house proposed to be taken, and also by sending a notice thereof by post to the persons interested in such lands as owners or reputed owners, lessees or reputed lessees, so far as they can be reasonably ascertained. 42 & 43 Vict.  
c. 63, Sched.  
Art. 1.

(7) In every case in which compensation is payable under Part I. of this Act, by the local authority to any claimant, and which compensation has not been made the subject of agreement (in this Act referred to as “ a disputed case ”), the arbitrator shall ascertain in such manner as he thinks most convenient the amount of compensation demanded by the claimant, and the amount which the local authority may be willing to pay ; and after hearing all such parties interested in each disputed case as may appear before him at a time and place of which notice has been given as in Part I. of this Act mentioned, he shall proceed to decide on the amount of compensation to which he may consider the claimant to be entitled in each case.

*Cf.* s. 7, *ante*, p. 534, and Art. 32 of this schedule, *infra*, p. 575.

**Sched.**

(8) The arbitrator shall give notice to the claimants in disputed cases by causing such notice to be published or otherwise in such manner as he thinks advisable, of a time and place at which the difference between the claimants and the local authority in disputed cases as to the amount of compensation to be paid will be decided by the arbitrator.

(9) After the arbitrator has arrived at a decision on all the disputed cases brought before him he shall make an award under his hand and seal, and such award shall be final, and be binding and conclusive (subject to the provisions concerning an appeal hereinafter contained) upon all persons whomsoever, and no such award shall be set aside for irregularity in matter of form, but the arbitrator may and, if the local authority request him so to do, shall from time to time make an award respecting a portion only of the disputed cases brought before him.

As to costs, see Art. 29, *post*.

(10) Such award as aforesaid shall be deposited at the office of the confirming authority, and a copy thereof shall be deposited at the office of the local authority, and the local authority shall thereupon publish once in each of three successive weeks notice of the deposit having been made at the office of the local authority of a copy of the award, and a further notice requiring all persons claiming to have any right to or interest in the lands (the compensation to be paid in respect of which is ascertained by such award) to deliver to the local authority on or before a day to be named in such notice (such day not being earlier than twenty-one days from the date of the last publication of the notice), a short statement in writing of the nature of such claim, and a short abstract of the title on which the same is founded; and such statement and abstract shall be paid for by the local authority. Such abstract of title, in the case of a person claiming a fee simple interest in the land, shall commence twenty years previous to the date of the claim, except there has been an absolute conveyance on sale within twenty years, and more than ten years previous to the claim when the abstract shall commence with such conveyance.

Under the Artizans and Labourers Dwellings Improvement Act, 1875, the arbitrator was required to frame a provisional award. In one case where a claim had been sent to the local authority, but by mistake not transmitted to the arbitrator, and the provisional award was made without this claim being included, but the arbitrator afterwards heard the claim and altered the provisional award, it was held that the irregularity was merely formal, and the final award was held to be good (*Carr v. Metropolitan Board of Works* (1880), 14 Ch. D. 807). Under the same schedule it was held that the property did not pass until the final award had been made (*Barnet v. Metropolitan Board of Works* (1882), 46 L. T. 384). The provisions as to the award in the 1875 Act were altered to their present form by the Artizans Dwellings Improvement Act, 1882.

*Special Powers of Arbitration.*

Power of  
arbitrator  
as to apportionment.

(11) The arbitrator shall have the same power of apportioning any rentservice, rentcharge, chief or other rent, payment, or incum-

brance, or any rent payable in respect of lands comprised in a lease, as two justices have under the Lands Clauses Consolidation Act, 1845 (a). Sched. 42 & 43 Vict. c. 63.

(a) See s. 98, *ante*, p. 231; s. 112, *ante*, p. 241; s. 116, *ante*, p. 243; s. 119, *ante*, p. 245. Sched. (2).

(12) Notwithstanding anything in section ninety-two of the Lands Clauses Consolidation Act, 1845 (a), the arbitrator may determine that such part of any house, building, or manufactory as is proposed to be taken by the local authority can be taken without material damage to such house, building, or manufactory, and if he so determine may award compensation in respect of the severance of the part so proposed to be taken, in addition to the value of that part, and thereupon the party interested shall be required to sell and convey to the local authority such part, without the local authority being obliged to purchase the greater part or the whole of such house, building, or manufactory. Amendment respecting severance of properties. 8 & 9 Vict. c. 18, s. 92. 42 & 43 Vict. c. 63. Sched. (3).

The local authority, or any person interested, if dissatisfied with a determination under this enactment, may, in manner provided with respect to appeals to a jury in respect of compensation for land by this schedule (b), submit the question of whether the said part can be taken without material damage, as well as the question of the proper amount of compensation, to a jury; and the notice of intention to appeal shall be given within the same time as notice of intention to appeal against the amount of compensation awarded is required to be given.

(a) See *ante*, p. 219.

(b) Arts. 26 and 27, *infra*.

As to what may be taken into account in determining whether the land can be severed without material damage, see *In re Gonty and Manchester, Sheffield and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439, and *Caledonian Rail. Co. v. Turcan*, [1898] A. C. 256; and notes to s. 92 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 221.

(13) The amount of purchase money or compensation to be paid in pursuance of section one hundred and twenty-four of the Lands Clauses Consolidation Act, 1845 (a), in respect of any estate, right, or interest in or charge affecting any of the scheduled lands which the local authority have through mistake or inadvertence failed or omitted duly to purchase or make compensation for, shall be awarded by the arbitrator and be paid, in like manner, as near as may be, as the same would have been awarded and paid if the claim of such estate, right, interest, or charge had been delivered to the arbitrator before the day fixed for the delivery of statements of claims. Omitted interests. 42 & 43 Vict. c. 63. Sched. (4).

If the arbitrator is satisfied that the failure or omission to purchase the said estate, right, interest, or charge, arose from any default on the part either of the claimant or of the local authority, he may direct the costs to be paid by the party so in default.

(a) *Ante*, p. 250.

**Sched.***Payment of Purchase Money.*

Arts. 14—24.  
See 38 &  
39 Vict. c. 36.  
Sched.

(14) Within thirty days from the delivery of such statement and abstract as aforesaid (a) to the local authority, the local authority shall, where it appears to them that any person so claiming is absolutely entitled to the lands, estate, or interest claimed by him, deliver to such person, on demand, a certificate stating the amount of the compensation to which he is entitled under the said award (b).

(a) Art. 10.

(b) This only relates to amount of compensation. As to certificate for costs, see Art. 29.

(15) Every such certificate shall be prepared by and at the cost of the local authority; and where any agreement has been entered into as to the compensation payable in respect of the interest of any person in any lands, the local authority may, where it appears to them that such person is absolutely entitled, deliver to such person a like certificate.

(16) The local authority shall, thirty days after demand, pay to the party to whom any such certificate is given, or otherwise as herein provided in the cases hereinafter mentioned, the amount of moneys specified to be payable by such certificate to the party to whom or in whose favour such certificate is given, his or her executors, administrators, or assigns.

(17) If the local authority wilfully make default in such payment as aforesaid, then the party named in such certificate shall be entitled to enter up judgment against the local authority in the High Court, for the amount of the sums specified in such certificate, in the same manner in all respects as if he had been, by warrant of attorney from the local authority, authorised to enter up judgment for the amount mentioned in the certificate, with costs, as is usual in like cases; and all moneys payable under such certificates, or to be recovered by such judgments as aforesaid, shall at law and in equity be taken as personal estate as from the time of the local authority entering on any such lands as aforesaid.

(18) When and so soon as the local authority have paid to the party to whom any such certificate as aforesaid is given, or otherwise, as herein provided, in the cases hereinafter mentioned, the amount specified to be payable by such certificate to the party to whom or in whose favour the certificate is given, his executors, administrators, or assigns, it shall be lawful for the local authority, upon obtaining such receipt as hereinafter mentioned, from time to time to enter upon any lands in respect of which such certificate is given, and thenceforth to hold the same for the estate or interest in respect of which the amount specified in such certificate was payable.

This article would appear to give the authority the right to take possession in cases where the money is paid into the bank under Art. 21, *post*. See *In re Shaw and the Corporation of Birmingham* (1884), 27 Ch. D. 614, pp. 619, 620. As to entering before such payment, see Arts. 24 and 25.

(19) In every case in which any moneys are paid by any local authority under this Act for such compensation as aforesaid, the

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party receiving such money shall give to the local authority a receipt for the same, and such receipt shall have the effect of a grant, release, and conveyance of all the estate and interest of such party, and of all parties claiming under or through him, in the lands in respect of which such moneys are paid, provided such receipt has an ad valorem stamp of the same amount impressed thereon in respect of the purchase moneys mentioned in such certificate as would have been necessary if such receipt had been an actual conveyance of such estate or interest, every such receipt to be prepared by and at the cost of the local authority.

A receiver has been authorised to give such a receipt (*Re Garnett's Estate*, [1900] 1 I. R. 144).

(20) If it appear to the local authority, from any such statement and abstract as aforesaid, or otherwise, that the person making any such claim as aforesaid is not absolutely entitled to the lands, estate, or interest in respect of which his claim is made, or is under any disability, or if the title to such lands, estate, or interest be not satisfactorily deduced to the local authority, then and in every such case the amount to be paid by the local authority in respect of such lands, estate, or interest as aforesaid shall be paid and applied as provided by the clauses of the Lands Clauses Consolidation Act, 1845, as amended by the Court of Chancery Funds Act, 1872, "with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title" (a).

(a) Sections 69—80, *ante*, pp. 131—178. The practice as to costs under s. 80, will therefore be applicable (*Ex parte Jones* (1880), 14 Ch. D. 624). The Chancery Funds Act, 1872, has been amended by the Supreme Court of Judicature (Funds) Act, 1883.

(21) Where any person claiming any right or interest in any lands refuses to produce his title to the same, or where the local authority have under the provisions of Part I. of this Act taken possession of any lands in respect of the compensation whereof, or of any estate or interest wherein, no claim has been made within one year from the time of the local authority taking possession, or if any party to whom any such certificate has been given or tendered refuses to receive such certificate, or to accept the amount therein specified as payable to him, then and in any such case the amount payable by the local authority in respect of such lands, estate, or interest, or the amount specified in such certificate, shall be paid into the Bank of England, in manner provided by the last-mentioned clauses of the Lands Clauses Consolidation Act, 1845, as amended by the Court of Chancery Funds Act, 1872, and the amount so paid into the said bank shall be accordingly dealt with as by the said Act provided.

"The provisions of Part I. of this Act" evidently refer to Arts. 24 and 25 of this schedule.

(22) Nothing herein contained shall prevent the local authority from requiring any further abstract or evidence of title respecting

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any lands included in any such award as aforesaid, in addition to the abstract or statement hereinbefore mentioned (a), if they think fit, so as the same be obtained at the cost of the local authority.

(a) Art. 10.

(23) If from any reason whatever the local authority does not deliver the certificate aforesaid to any party claiming to be entitled to any interest in any lands the possession whereof has been taken by the local authority as aforesaid, then the right to have a certificate according to the provisions of this Act may, at the cost and charge of the local authority, be enforced by any party or parties, by application to the High Court, in a summary way by petition, and all other rights and interests of any party or parties arising under the provisions of this Act may be in like manner enforced against the local authority by such application as aforesaid.

Under the Lands Clauses Acts, the procedure to compel promoters to do any act, is usually by *mandamus*. Here a procedure by petition is substituted.

It was held that the corresponding provisions in the schedule to the Artizans and Labourers Dwellings Improvement Act, 1875, enabled a local authority to enter into possession after payment to the party entitled, or after payment into court of the sum awarded by the arbitrator (*In re Shaw and the Corporation of Birmingham* (1884), 27 Ch. D. 614).

*Entry on Lands on Making Deposit.*

(24) Where the local authority are desirous, for the purposes of their works, of entering upon any lands before they would be entitled to enter thereon under the provisions hereinbefore contained, it shall be lawful for the local authority, at any time after the arbitrator has framed his award, upon depositing in the Bank of England such sum as the arbitrator may certify to be in his opinion the proper amount to be so deposited in respect of any lands authorised to be purchased or taken by the local authority, and mentioned in such award, to enter upon and use such lands for the purposes of the improvement scheme of the local authority: and the arbitrator shall, upon the request of the local authority at any time after he has framed such award, certify under his hand the sum which, in his opinion, should be so deposited by the local authority in respect of any lands mentioned in such award before they enter upon and use the same as aforesaid, and the sum to be so certified shall be the sum or the amount of the several sums set forth in such award as the sum or sums to be paid by the local authority in respect of such lands, or such greater amount as to the arbitrator, under the circumstances of the case, may seem proper; and, notwithstanding such entry as aforesaid, all proceedings for and in relation to the completion of the award, the delivery of certificates, and other proceedings under Part I. of this Act, shall be had, and payments made, as if such entry and deposit had not been made;

Provided that the local authority shall, where they enter upon any lands by virtue of this present provision, pay interest at the

**Sched.**

rate of five pounds per centum per annum upon the compensation money payable by them in respect of any lands so entered upon, from the time of their entry until the time of the payment of such money and interest to the party entitled thereto, or where, under the provisions of Part I. of this Act, such compensation is required to be paid into the Bank of England, then until the same, with such interest, is paid into such bank accordingly; and where under this provision interest is payable on any compensation money the certificate to be delivered by the local authority in respect thereof shall specify that interest is so payable, and the same shall be recoverable in like manner as the principal money mentioned in such certificate.

As to entry for other purposes, as where the buildings are dangerous, see *Barnett v. Metropolitan Board of Works* (1882), 46 L. T. (N.S.) 384.

As to costs on payment out of court, the same rule will apply as under the Lands Clauses Act, 1845 (*Ex parte Jones* (1880), 43 L. T. 84). And see notes to s. 80, *ante*, p. 178.

(25) The money so deposited as last aforesaid shall be paid into the Bank of England to such account as may from time to time be directed by any regulation or Act for the time being in force in relation to moneys deposited in the bank in similar cases, or to such account as may be directed by any order of the High Court, and remain in the bank by way of security to the parties interested in the lands which have been so entered upon for the payment of the money to become payable by the local authority in respect thereof under the award of the arbitrator; and the money so deposited may, on the application by petition of the local authority, be ordered to be invested in Bank Annuities or Government securities, and accumulated: and upon such payment as aforesaid by the local authority it shall be lawful for the High Court, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the local authority, or, in default of such payment as aforesaid by the local authority, it shall be lawful for the said court to order the same to be applied in such manner as it thinks fit for the benefit of the parties for whose security the same shall so have been deposited.

*Cf.* ss. 85—91 of the Lands Clauses Consolidation Act, 1845, and notes thereto, *ante*, pp. 205—218.

### *Appeal.*

(26) In the following cases, namely,—

- (a) Where the party named in any certificate issued under the provisions hereinbefore contained of the amount of the compensation ascertained by any award under Part I. of this Act (or any party claiming under the party so named) is dissatisfied with the amount in such certificate certified to be payable, and such amount exceeds one thousand pounds, and
- (b) Where any party claiming any interest in any moneys so paid into court as aforesaid is dissatisfied with the amount of

See 45 &  
46 Vict. c. 54.  
Sched. (G).

**Sched.**

the price or compensation in respect of which such moneys are paid into court, and such amount exceeds one thousand pounds; also

- (c) Where the local authority is dissatisfied with the amount of compensation which the arbitrator appointed under the provisions of Part I. of this Act has awarded to be paid by the local authority to any person in respect of any estate or interest in lands, and such amount exceed the sum of one thousand pounds:

the party dissatisfied may, upon obtaining the leave of the High Court, which leave may be granted by such court or any judge thereof at chambers in a summary manner, and upon being satisfied that a failure of justice will take place if the leave is not granted, submit the question of the proper amount of compensation to a jury, provided that such party give notice in writing to the other party of their intention to appeal within ten days after the cause of appeal has arisen.

The cause of appeal shall be deemed to have arisen—

- (1) Where a certificate has been issued as aforesaid, at the date of the issue of the certificate;
- (2) Where moneys have been paid into court, at the date of the payment into court;
- (3) Where the local authority appeals, at the date of the making of the award.

“*Failure of justice.*”—Leave to appeal from an arbitrator’s award will not be given merely on the affidavits of valuers who swear that in their opinion the amount awarded is less than the true value, nor even if the court disagree with the figures of the arbitrator. The court must be satisfied that a failure of justice will take place, but in order to establish such failure it is not necessary to show some mistake in law, although such mistake as the wrong admission or exclusion of evidence would be sufficient (*Ex parte Larmuth and Lees* (1894), 10 T. L. R. 225; *Ex parte Birch*, [1894] 2 I. R. Q. B. 181). In the latter of these cases the court also expressed the opinion that a claimant to whom several sums have been awarded each less than £1,000, but in the aggregate exceeding that sum, in respect of an estate held under the same title, may be given leave to appeal.

In Scotland the court refused leave to appeal in a case where the arbitrator had limited the skilled evidence of the value of the lands to two witnesses on each side, and had personally inspected the lands, and in his award had proceeded in part on his own judgment as a man of skill. It was suggested that leave to appeal should only be given on much the same grounds as those on which a new trial would be ordered (*Macknight’s Trustee v. Edinburgh Corporation* (1901), 3 F. 90).

The procedure to obtain leave to appeal would appear to be either by motion, notice being given, or by summons in chambers. See the above cases. Whether the application is made in chambers or in court, there is no appeal to a higher court (*Ex parte Stevenson*, [1892] 1 Q. B. 394, 609).

- (27) Where a notice has been given under Part I. of this Act of an appeal to a jury in respect of compensation for land, or any interest in land, a question of disputed compensation required to be determined by the verdict of a jury shall be deemed to have arisen within the meaning of the Lands Clauses Consolidation Act, 1845,

and all the provisions of that Act contained in sections thirty-eight to fifty-seven (a), both inclusive, shall be deemed to apply, except sections forty-seven and fifty-one: Provided also, that—

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- (1) Where the local authority appeals that authority shall be deemed to be the plaintiff and the party entitled to compensation to be the defendant; and
- (2) Where the party claiming compensation appeals, then, in case the verdict of the jury is for a sum exceeding the award of the arbitrator, the local authority shall pay to such party the costs of the trial, such costs to be taxed and ascertained in the same manner as costs are by law ascertained on the trial of issues tried in the High Court; but in case the verdict of the jury is for a sum not exceeding the award of the arbitrator, the party appealing shall pay to the local authority the costs of the trial to be taxed and ascertained in manner aforesaid.
- (3) Where the local authority is the appellant—
  - (a) Notwithstanding the verdict of the jury may be for a sum less than that awarded by the arbitrator, the local authority shall pay to the other party such sum not exceeding twenty pounds for the costs of the trial as the sheriff or other officer before whom the same is tried shall direct; and
  - (b) In case the verdict of the jury is for a sum equal to or exceeding the award of the arbitrator, the local authority shall pay to the other party the costs of the trial, such costs to be taxed and ascertained in manner aforesaid.
  - (c) The amount of compensation awarded by the arbitrator shall not be communicated to the jury, but they shall be required to make an independent assessment of the amount of compensation to which the party claiming compensation is entitled.

(a) *Ante*, pp. 73—93.

Where a sum of money has been paid into court by a local authority under the award of an arbitrator and on appeal a larger sum is awarded by the verdict of a jury, and the difference is afterwards paid into court, interest at the rate of 4 per cent. is payable on the difference from the date of the first payment in to the date of the second (*In re Shaw and the Corporation of Birmingham* (1884), 27 Ch. D. 614).

#### *Costs of Arbitration.*

(28) The salary or remuneration, travelling, and other expenses of the arbitrator, and all costs, charges, and expenses (if any) which may be incurred by the confirming authority in carrying the provisions of Part I. of this Act into execution, shall, after the amount thereof shall have been certified under this article, be paid by the local authority; and the amount of such costs, charges, and expenses shall from time to time be certified by the confirming authority after first hearing any objections that may be made to the reasonableness of any such costs, charges and expenses by or on behalf of the local authority; and every certificate of the said confirming authority certifying the amount of such costs,

See 45 &  
46 Vict, c. 54.  
Sched. (H).

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charges, and expenses shall be taken as proof in all proceedings at law or in equity of the amount of such respective costs, charges, and expenses, and the amount so certified shall be a debt due from the local authority to the Crown, and shall be recoverable accordingly.

Further, any such certificate may be made a rule of a superior court on the application of any party named therein, and may be enforced accordingly.

(29)--(1) It shall be lawful for the arbitrator, where he thinks fit, upon the request of any party by whom any claim has been made before him, to certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority ;

Provided that—

- (a) The arbitrator shall not be required to certify the amount of costs in any case where he considers such costs are not properly payable by the local authority ;
- (b) The arbitrator shall not be required to certify the amount of costs incurred by any party in relation to the arbitration, in any case where he considers that such party neglected, after due notice from the local authority, to deliver to that authority a statement in writing within such time, and containing such particulars respecting the compensation claimed, as would have enabled the local authority to make a proper offer of compensation to such party before the appointment of the arbitrator.
- (c) No certificate shall be given where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of the claim before the appointment of the arbitrator.

(2) If within seven days after demand the amount certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from the local authority with interest at the rate of five per cent. per annum for any time during which the same remains unpaid after such seven days as aforesaid.

In taxing a solicitor's bill in respect of the conveyance, all costs of attending at the arbitration and preparing for it were disallowed, as the arbitrator's certificate had not been asked for (*Re Agnew and Keenan*, [1900] 1 I. R. 33).

### *Miscellaneous.*

(30) The arbitrator may call for the production of any documents in the possession or power of the local authority, or of any party making any claim under the provisions of Part I. of this Act, which such arbitrator may think necessary for determining any question or matter to be determined by him under Part I. of this Act, and may examine any such party and his witnesses, and the witnesses for the local authority, on oath, and administer the oaths necessary for that purpose.

(31) If any arbitrator appointed in pursuance of Part I. of this Act, die, or refuse, decline, or become incapable to act, the confirming authority may appoint an arbitrator in his place, who shall have

See 45 &  
46 Vict. c. 54.  
Sched. (I).

the same powers and authorities as the arbitrator first appointed; and upon the appointment of any arbitrator in the place of an arbitrator dying, or refusing, declining, or becoming incapable to act, all the documents relating to the matter of the arbitration which were in the possession of such arbitrator shall be delivered to the arbitrator appointed in his place, and the local authority shall publish notice of such appointment in the London Gazette.

(32) All notices required by this schedule to be published shall be published in some one and the same newspaper circulating within the jurisdiction of the local authority, and where no other form of service is prescribed all notices required to be served or given by the local authority under this schedule or otherwise upon any persons interested in or entitled to sell lands, shall be served in manner in which notices of lands proposed to be taken compulsorily for the purpose of an improvement scheme are directed by Part I. of this Act to be served upon owners or reputed owners, lessees or reputed lessees, and occupiers (a).

(a) See s. 7, *ante*, p. 534.

The remaining articles, 33—35, of the schedule contain provisions applying the procedure to Scotland and Ireland.

Sched.  
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## THE PARLIAMENTARY DEPOSITS AND BONDS ACT, 1892.

(55 & 56 VICT. c. 27.)

*An Act to authorise the release of certain Deposits, and the cancellation of certain Bonds, made or given to secure the performance of undertakings authorised by Parliament.*

[27th June 1892.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Power to  
release  
deposits.

1.—(1) Where in pursuance of any general or special Act of Parliament, or of any rules made thereunder, moneys or securities have been deposited with, or are standing in the name of, the Paymaster-General to secure the completion by any company of any undertaking authorised by Parliament, or by any certificate issued under the authority of an Act of Parliament, and the undertaking has not been completed within the time limited in that behalf, the High Court may, notwithstanding anything in any such general or special Act or rules, order that the moneys or securities (in this Act called the deposit fund), or any part thereof, be applied towards compensating any landowners or other persons whose property has been interfered with or otherwise rendered less valuable by the commencement, construction, or abandonment of the undertaking, or any portion thereof, or who have been subjected to injury or loss in consequence of any compulsory powers of taking property given in connection with the undertaking, and have received no compensation or inadequate compensation for such injury or loss ; and also, in the case of a tramway company, towards compensating the road authorities for the expenses incurred by them in taking up any tramway or materials connected therewith placed by the tramway company in or on any road vested in or maintainable by the road authorities, and in making good all damage caused to such roads by the construction or abandonment of the tramway.

(2) Subject to payment of any such compensation, and notwithstanding any provision as to forfeiture to the Crown, the

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High Court may, if a receiver has been appointed, or the company is insolvent and has been ordered to be wound up, or the undertaking has been abandoned, order that the deposit fund or any part thereof be paid or transferred to the receiver or to the liquidator of the company, or be applied as part of the assets of the company for the benefit of the creditors thereof.

(3) Subject to such application as aforesaid the High Court may, after such public notice as to the Court seems reasonable, order that the deposit fund or any part thereof be paid or transferred to the depositors or the persons claiming through or under them.

(4) If any money or securities deposited with or standing in the name of the Paymaster-General for the purposes of this section on or before the thirty-first of March one thousand eight hundred and ninety are not claimed by or on behalf of the depositors thereof within ten years after the passing of this Act, the Treasury may pay or transfer the same to the National Debt Commissioners to be applied by them towards the reduction of the National Debt.

(5) This section shall apply to any person or body of persons authorised by Parliament or by any such certificate as aforesaid to carry out an undertaking as if he or they were a company.

As the terms and provisions of the Railway Abandonment Acts (see *ante*, p. 382) do not appear to apply to railways formed since 1867, the decisions as to compensation to landowners when a railway has been abandoned have turned mainly on the construction of the special Act authorising the abandonment, and upon the provisions as to the distribution of the parliamentary deposit. It was usual to insert in the Act authorising the abandonment, a proviso that the deposit shall be applicable towards compensating any landowners or other persons whose property may have been interfered with, or otherwise rendered less valuable by the commencement, construction, or abandonment of the railway, or any portion, or who may have been subjected to injury or loss in consequence of the compulsory powers of taking property conferred upon the company by the Act authorising the railway, and for which injury or loss no compensation or inadequate compensation shall have been paid.

It will be seen that s. 1 (1) of this Act is in almost indential terms, and that the provision is now made applicable to all parliamentary deposits when the undertaking is abandoned.

It has been held under the provision above mentioned in a special Act that the words "commencement, construction, or abandonment" were disjunctive, and that the diminution in value must be estimated by comparing the value of the land immediately before and its value immediately after the abandonment (*In re Potteries, Shrewsbury, and North Wales Rail. Co.* (1883), 25 Ch. D. 251). It would appear that the compensation is not confined to loss occasioned by the action of the company under its statutory powers alone, but that if the company have entered into covenants with a landowner to do certain acts, such as to make a station on his land, or to erect a fence, and if the abandonment of the railway makes the performance of these covenants impossible, the consequent loss may be taken into account in estimating the deterioration of the value of the land. The land-

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owner must, however, prove that the breaches of covenant do in fact deteriorate the value of the land (*In re Ruthin and Cerrig-y-Druiddion Railway Act* (1886), 32 Ch. D. 438).

Where a landowner had commenced works on his own land before a railway company had obtained their Act on the speculation that they would obtain power to construct the railway, and that his works would be utilized in the construction of the railway, and the company afterwards obtained their Act, but the railway was abandoned, it was held that the landowner, while having no claim for compensation in respect of injury by the commencement or construction of the railway, had a claim for compensation for injury done by the abandonment, and that his land was depreciated by having an embankment on it, which had become useless, and which before the abandonment was of value (*In re Potteries, Shrewsbury, and North Wales Rail. Co.* (1883), 25 Ch. D. 251).

In the same case it was held that mortgagees of the land might be persons entitled to claim compensation under the Act. It is usual for the court to order an enquiry as to what landowners and other persons there are whose lands have been injured by the commencement, construction, or abandonment of the railway. See form of order, *S. C.*, p. 262.

In the case of *In re Uxbridge and Rickmansworth Rail. Co.* (1890), 43 Ch. D. 536, three claims were made by three different landowners to be entitled to priority to the other creditors under the provisions of the special Act, which were similar in effect to this Act, as persons who had been subjected to injury or loss in consequence of the compulsory powers of taking property conferred upon the company. In one of these cases, *Grainge's Case*, the company had served a notice to treat on Grainge, the landowner, in reply to which he had delivered particulars of his estate and the amount he claimed as purchase money. Nothing further was done, and his claim in this case was for the costs and charges of surveyors and solicitors incurred in consequence of the notice. In the next case, *Harman's Case*, the company had also served a notice to treat, which had been followed by legal proceedings, and by an agreement by the company to purchase the land, and to pay preliminary and other costs of solicitors and surveyors. The purchase was not completed, and the claim in this case was for the various costs and charges incurred. In the third case, *Way's Case*, the claim was for compensation and damages for the non-completion of an agreement to purchase land, and for the costs and charges incurred in consequence. The court held that the service of a notice to treat was not an exercise of compulsory powers, following in this respect *Guest v. Poole and Bournemouth Rail. Co.* (1870), L. R. 5 C. P. 553, and that the landowners were not entitled to any priority in consequence of any loss caused by its service, and further that the landowners had not suffered any loss in consequence of the notice to treat. They were allowed to rank as ordinary creditors for any claim they could prove.

When a company have resolved to abandon an undertaking, the court has no power to order payment of the deposit until the time limited for the completion of the works has expired, although the time for acquiring land compulsorily has expired, and they have taken no steps to acquire land (*Ex parte Chambers*, [1893] 1 Ch. 47).

Where a company has not completed the whole of its undertaking, but is solvent and has completed the greater part of it, the court under sub-s. (3) will only require notices to be served on the owners before payment out (*In re Hull, Barnsley and West Riding Junction Rail. Co.*, W. N. (1893) 83).

Power to  
cancel bonds.

2. Where in pursuance of any general or special Act of Parliament any bond has been given to secure the completion of any

undertaking authorised by Parliament, or by any certificate issued under the authority of an Act of Parliament, and the undertaking has not been completed within the time limited in that behalf, the money thereby secured shall be applicable to the same purposes as the deposit fund hereinbefore mentioned, and the Treasury may, if they think fit, cancel the bond on proof to their satisfaction that the money thereby secured has been applied or is not required for those purposes.

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**3, 4. . . .**

Sections 3 and 4 extend the Act to Scotland and Ireland.

**5.** This Act may be cited as the Parliamentary Deposits and Short title. Bonds Act, 1892.

# THE MILITARY LANDS ACT, 1892.

(55 & 56 VICT. c. 43.)

*An Act to consolidate and amend certain enactments relating to the Acquisition of Land for Military Purposes.*

[27th June 1892.]

**P:** This Act consolidates and amends various statutes dealing with the acquisition of lands for the building and enlarging of barracks and camps, and for the erection of butts and the providing of ranges and for drill grounds. By s. 28, it repeals various enactments dealing with the acquisition of lands for these purposes. The enactments repealed are : Section 1 of the Defence Act, 1859, (22 Vict. c. 12), which enabled the Secretary of State to acquire rights of common ; ss. 31—40 of the Volunteer Act, 1863 (26 & 27 Vict. c. 65), which dealt with the acquisition of land for ranges for volunteers ; s. 17 of the Regulation of the Forces Act, 1871, which amended these sections of the Volunteer Act, 1863 ; the whole of the Artillery and Rifle Ranges Act, 1885 (48 & 49 Vict. c. 36), except s. 3, which has since been repealed by the Military Lands Act, 1900 ; the whole of the Drill Grounds Act, 1886 (49 & 50 Vict. c. 5) ; ss. 2 and 3 of the Barracks Act, 1890 (53 & 54 Vict. c. 25), which sections enabled the Secretary of State to purchase lands for purposes similar to this Act, and the whole of the Ranges Act, 1891 (54 & 55 Vict. c. 54), except s. 11, in so far as it amends the Defence Act, 1842, for which see Appendix.

This Act has been amended by the Military Lands Act, 1897 (60 Vict. c. 6), which merely extends the power of a volunteer corps to borrow : by the Military Lands Act, 1900 (63 & 64 Vict. c. 56), *post*, p. 628 ; and by the Military Lands Act, 1903 (3 Edw. 7, c. 47), which empowers councils to hire land by agreement for military purposes.

By the Naval Works Act, 1895 (58 & 59 Vict. c. 35), s. 2, the powers of this Act are extended to the Admiralty and his Majesty's Naval Forces, *post*, p. 609.

## PART I.

### ACQUISITION OF LAND FOR MILITARY PURPOSES.

Powers to  
purchase  
land.

**1.—(1)** A Secretary of State may purchase land in the United Kingdom under this Act, for the military purposes of any portion of her Majesty's military forces.

**(2)** A volunteer corps may, with the consent of the Secretary of State, themselves purchase land under this Act for military purposes.

**(3)** The council of a county or borough may, at the request of one or more volunteer corps, purchase under this Act, and hold, land on behalf of the volunteer corps for military purposes.

**(4)** The Secretary of State shall, before giving his consent to the purchase of any land under this Act by a volunteer

**Sect. 1.**

corps, send an inspector to the land for the purpose of ascertaining its capabilities of being used for military purposes with due regard to the safety and convenience of the public, and shall give or withhold his consent accordingly.

The Admiralty may also purchase land under this Act for any purpose of the Naval Works Act, 1895, *post*.

A county council holding land under sub-s. (3) hereof may lease it to the corps for military purposes for a period not exceeding 99 years (Military Lands Act, 1900, s. 1).

**2.** For the purpose of the purchase of land under this Act, the Lands Clauses Acts shall be incorporated with this Act, with the exceptions and additions and subject to the provisions following ; (that is to say,) Machinery for purchase of land.

(1) There shall not be incorporated with this Act sections sixteen or seventeen of the Lands Clauses Consolidation Act, 1845 (*a*), or the provisions of that Act with respect to affording access to the special Act (*b*).

(2) In the construction of this Act and the incorporated Acts this Act shall be deemed to be the special Act, and the Secretary of State, volunteer corps, or council of a county or borough, as the case may be (in this section referred to as "the purchaser"), shall be deemed to be the promoters of the undertaking.

(3) Where the Secretary of State is the purchaser—

(a) The bond required by section eighty-five of the Lands Clauses Consolidation Act, 1845 (*c*), shall be under the seal of the Secretary of State, and shall be sufficient without the addition of the sureties in those sections mentioned.

(b) When compensation has been paid to any person in respect of any estate or interest in land taken under this Act, the land shall vest in the Secretary of State for all the estate and interest of that person, including any estate or interest therein held in trust by that person or capable of being conveyed by him in pursuance of any power. Nevertheless the Secretary of State may require that person to execute any conveyance which he might have been required to execute if this Act had not passed ; and nothing in this section shall in any manner invalidate any such conveyance when executed.

(4) The provisions of the incorporated Acts with respect to the purchase of land compulsorily shall not be put in force

**Sect. 2.**

until a provisional order has been made and the sanction of Parliament has been obtained in manner in this Act mentioned.

- (5) One month at the least before the making of the provisional order, if the Secretary of State is the purchaser, and before the application for the order in any other case, the purchaser shall serve, in manner provided by the Lands Clauses Acts, a notice on every owner or reputed owner, lessee or reputed lessee, and occupier of any land intended to be so purchased, describing the land intended to be taken, and in general terms the purposes to which it is to be applied, and stating the intention of the purchaser to obtain the sanction of Parliament to the purchase thereof, and inquiring whether the person so served assents or dissents to the taking of his land, and requesting him to forward to the purchaser any objections he may have to his land being taken.
- (6) Where the Secretary of State is the purchaser, he shall, at some time after the service of the notice, cause a public local inquiry to be held by a competent officer into the objections made by any persons whose land is required to be taken, and by other persons, if any, interested in the subject-matter of the inquiry.
- (7) Where the purchaser is a volunteer corps or the council of a county or borough—
- (a) The corps or council may, if they think fit, on compliance with the provisions of this section with respect to notices, present a petition to a Secretary of State. The petition shall state the land intended to be taken, and the purposes for which the land is required, and the names of the owners, lessees, and occupiers of land who have assented, dissented, or are neuter in respect of the taking the land, or who have returned no answer to the notice. The petition shall pray that the corps or council may, with reference to the land, be allowed to put in force the powers of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement, and the prayer shall be supported by such evidence as the Secretary of State requires :
- (b) On receipt of the petition and on due proof of the proper notices having been served, the Secretary of State shall take the petition into consideration, and may

either dismiss the same, or direct a public local inquiry to be held by a competent officer as to the propriety of assenting to the prayer of the petition.

(8) Before a local inquiry is held in pursuance of this section the Secretary of State shall publish a notice of the intention to hold the inquiry—

(a) By affixing copies conspicuously on or in the immediate neighbourhood of the land proposed to be acquired ; and

(b) By advertising the notice once at least in each of two successive weeks in some one and the same local newspaper circulating in the neighbourhood.

(9) If after the local inquiry has been held the Secretary of State is satisfied that the land ought to be taken, he may make a provisional order to that effect, authorising the taking of the land either by himself or by a volunteer corps or by a council of a county or borough, as the case may be, and may submit a Bill to Parliament for the confirmation of the provisional order, but the provisional order shall not be of any effect unless and until it is confirmed by Parliament.

(10) If, while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against anything comprised therein, the Bill, so far as relates to the order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills.

(a) *Ante*, pp. 26, 28. These sections deal with subscription of capital in the case of public companies.

(b) Sections 150, 151, *ante*, p. 275.

(c) *Ante*, p. 205.

There was an omission in this Act of a definition of the Special Act, so that by reading s. 123 of the Lands Clauses Consolidation Act, 1845, with this Act, it appeared as if the powers could not be enforced after three years. As Parliament had passed provisional orders after the three years it was held that the time must be calculated from the passing of the provisional order (*Hill v. Haire*, [1899] 1 I. R. 87). The omission has, however, been remedied by s. 4 of the Military Lands Act, 1900, *post*, p. 630.

There have been several recent cases in Ireland under this Act and the Defence Acts. Thus, where land was taken under this Act, a claim was made by the landowner for loss arising from the fact that after the land was taken he would be unable to recover arrears of rent. This was held not to be a subject of compensation ; it was further held that the costs of a prior abortive arbitration under the Railways (Ireland) Acts could not be awarded (*In re Kilworth Rifle Range*, [1899] 2 I. R. 305).

Where the Secretary for War was lessee of certain land for the purpose of a rifle range, at a rent above the agricultural value, and for a term of years, but with power to determine the lease at fixed earlier dates, and he

**Sect. 2.****NOTE.**

gave notice to treat for the purchase of the reversion, it was held that the compensation payable in respect of the reserved rent should be assessed on the basis of a purchase at a point of time immediately before the notice to treat, and should be valued at the rent reserved, taking into account the likelihood of the lease being determined before the full term had expired. It was also suggested that twenty per cent. was an unreasonable addition for compulsory purchase in such circumstances (*In re Athlone Rifle Range*, [1902] 1 I. R. 433).

In another case, where lands were taken for use as a camp and artillery range under the Defence Act, 1842, and amending Acts, it was held that compensation might be allowed for depreciation of the value of other lands of the owner resulting from the use of the land as a camp and range, following an opinion expressed in *R. (Moore) v. Abbott*, [1897] 2 I. R. 362. In estimating such compensation regard may be had to loss of privacy and amenity and the vulgarisation of the neighbourhood, but not to loss from apprehended trespass by soldiers and others. It was also held that compensation may be allowed for injury caused by the nature of an artillery range to a fishery attached to the lands not taken, and an opinion was expressed by GIBSON, J., that it might also be allowed for injury to a several fishery (*In re Ned's Point Battery*, [1903] 2 I. R. 192).

Where tenants' interests were taken and the tenants had no title except occupation, it was held that if the War Office required representation to previous occupiers that office must pay death duties and the costs of taking out probate or letters of administration (*In re Bear Island Defence Works and Doyle*, [1903] 1 I. R. 164).

**Power to let land.**

**3.** Land acquired under this Act may be let by a volunteer corps, or if acquired by the council of a county or borough by that council, in any manner consistent with the use thereof for military purposes.

As to leases by the councils, see s. 1 of the Military Lands Act, 1900. and s. 1 (2) of the Military Lands Act, 1903.

**4—7. . . .**

Sections 4—7 contain provisions as to obtaining money for the purposes of acquiring lands; s. 5 has been amended by the Military Lands Act, 1897 (60 Vict. c. 6).

**Provision as to disbandment of corps, etc.**

**8.**—(1) If a volunteer corps holding land under this Act is disbanded, the land shall, by virtue and subject to the provisions of this section, vest in the Secretary of State from the date of the disbandment, subject to the repayment of any money borrowed for the purchase of the land, and not already repaid, and the sums required for such repayment shall, if and so far as not provided by the sale of the land, be paid out of moneys provided by Parliament for Army services.

(2) A certificate of the Secretary of State that land has vested in him under this section shall be conclusive evidence of the fact certified.

(3) If the volunteer corps on whose behalf land is acquired under this Act by a county or borough council is disbanded, the

**Sect. 8**

council may either appropriate the land to any purpose approved by the Local Government Board, or sell it for the best price that can be reasonably obtained, and any money arising from the sale shall be applied towards repaying any money borrowed for the purchase of the land, and so far as not required for that purpose shall be applied to any purpose to which capital moneys are properly applicable, and which is approved by the Local Government Board.

Provided that before so appropriating any such land or before selling any such land, if it is not so appropriated, the council shall offer to sell the same to the person then entitled to the land (if any) from which the same was originally severed, and thereupon sections one hundred and twenty-nine to one hundred and thirty-two, both inclusive, of the Lands Clauses Consolidation Act, 1845, 8 & 9 Vict. shall apply as if the land were superfluous land and the council were the promoters of the undertaking within the meaning of those sections (a). c. 18.

(a) For these sections, see *ante*, pp. 263, 264.

9.—(1) Rules under section twenty-four of the Volunteer Act, 1863, may provide for the exercise of any powers and the performance of any duty under this Act by any officer of the volunteer corps on behalf of the corps, and may provide generally for the carrying into effect of this Act by a volunteer corps. Rules as to exercise of powers, etc., by volunteer corps. 26 & 27 Vict. c. 65.

(2) The powers given by section twenty-five of the Volunteer Act, 1863, to the commanding officer for the time being of a volunteer corps and his successors shall include a power to mortgage any land acquired under this Act and to do all things necessary for that purpose.

**10, 11. . . .**

Sections 10 and 11 enable Crown lands and lands held for ecclesiastical or public purposes to be leased to the Secretary of State, or to a volunteer corps for military purposes. By s. 24, the Secretary of State cannot acquire any lease or license over land in the New Forest, except by provisional order.

12. Any land leased under this Act shall be deemed to have ceased to be used for military purposes where there has not been such use for a period of one year, and a certificate of the fact of such non-user is given by a Secretary of State; and the certificate shall be conclusive evidence of the fact of such non-user. Proof that land has ceased to be used for military purposes.

**Sect. 13.**

Power to  
stop or divert  
footpaths.

**13.**—(1) Where a footpath crosses or runs inconveniently or dangerously near to any land leased under this Act, that footpath may, with the consent of the vestry of the parish in which the same is situate, and on the certificate of two justices that the footpath to be substituted is convenient for the public, be stopped up or diverted.

5 & 6 Will. 4,  
c. 50.

(2) The provisions of the Highway Act, 1835, as to the obtaining of a certificate and the stopping up or diverting a highway where a person other than the inhabitants or vestry are desirous of stopping up, diverting, or turning a highway shall apply so far as practicable to the obtaining of a certificate, and the stopping up or diverting a footpath under this section ; with this exception, that the certificate of the justices shall be conclusive in cases where it states the fact of their having viewed the footpath to be stopped up or diverted, and that the proposed new footpath is convenient for the public.

**PART II.****BYELAWS AS TO LAND USED FOR MILITARY PURPOSES.**

Power of  
Secretary of  
State to  
make bye-  
laws as to  
use of land  
held for mili-  
tary purposes  
and securing  
safety of  
public.

**14.**—(1) Where any land belonging to a Secretary of State or to a volunteer corps is for the time being appropriated by or with the consent of a Secretary of State for any military purpose, a Secretary of State may make byelaws for regulating the use of the land for the purposes to which it is appropriated, and for securing the public against danger arising from that use, with power to prohibit all intrusion on the land and all obstruction of the use thereof.

Provided that no byelaws promulgated under this section shall authorise the Secretary of State to take away or prejudicially affect any right of common.

(2) Where any such byelaws permit the public to use the land for any purpose when not used for the military purpose to which it is appropriated, those byelaws may also provide for the government of the land when so used by the public, and the preservation of order and good conduct thereon, and for the prevention of nuisances, obstructions, encampments, and encroachments thereon, and for the prevention of any injury to the same, or to anything growing or erected thereon, and for the prevention of anything interfering with the orderly use thereof by the public for the purpose permitted by the byelaws.

(3) For the purposes of this section, "land belonging to a Secretary of State" means land under the management of a Secretary of State, whether vested in her Majesty or in the Secretary of State, or in a person as trustee for her Majesty or

the Secretary of State ; and “land belonging to a volunteer corps” means any land vested in that corps or in any person as trustee for that corps. Sect. 14.

The power hereby given is extended to land taken by the Admiralty under this Act, and compensation for injurious affection by reason of the byelaws is given by s. 2 of the Military Lands Act, 1900, *post*, which repeals s. 3 of the Artillery and Rifle Ranges Act, 1885.

15. Where a Secretary of State or a volunteer corps has for the time being the right of using for any military purpose any land vested in another person, this Part of this Act shall apply in like manner as if the land were vested in the Secretary of State or volunteer corps, and the same were appropriated for the said purpose, save that nothing therein or in any byelaws made thereunder shall injuriously affect the private rights of any person further or otherwise than is authorised by the grant of the right to use the land. Application of byelaws where right of firing acquired.

16.—(1) A byelaw under this Act shall not interfere with any highway, unless made with the consent of the authority having control of the repair of the roads of the town, district, parish, or other area in which the highway is situate, but where it appears to the authority that any highway crosses or runs inconveniently or dangerously near to any land the use of which can be regulated by byelaws under this Act, the authority may consent to a byelaw providing to such extent as seems reasonable for the temporary diversion from time to time of the highway, or for the restriction from time to time of the use thereof. Byelaws as to highways.

(2) Any such highway, if a footpath, may (without prejudice to any other power of stopping up or diverting the same) be stopped up or diverted in the manner in which a footpath crossing or running inconveniently or dangerously near to any land leased under Part One of this Act may be stopped up or diverted.

In a case in Scotland, a member of the public was held entitled to an interdict against the use of a rifle range by volunteers because of the nuisance from firing, when the provisions of this section had not been complied with (*Fergusson v. Pollok* (1902), 3 F. 1140).

17.—(1) A Secretary of State, before making any byelaws under this Act, shall cause the proposed byelaws to be made known in the locality, and give an opportunity for objections being made to the same, and shall receive and consider all objections made ; and when any such byelaws are made, shall cause the boundaries of the area to which the byelaws apply to be marked, and the byelaws to be published, in such manner as appears to him Notice and enforcement of byelaws.

**Sect. 17.** necessary to make them known to all persons in the locality ; and shall provide for copies of the byelaws being sold at the price of one shilling for each copy to any person who desires to obtain the same.

(2) If any person commits an offence against any byelaw under this Act, he shall be liable, on conviction before a court of summary jurisdiction, to a fine not exceeding five pounds, and may be removed by any constable or officer authorised in manner provided by the byelaw from the area, whether land or water, to which the byelaw applies, and taken into custody without warrant, and brought before a court of summary jurisdiction to be dealt with according to law, and any vehicle, animal, vessel, or thing found in the area in contravention of any byelaw, may be removed by any constable or such officer as aforesaid, and on due proof of such contravention, be declared by a court of summary jurisdiction to be forfeited to her Majesty.

**31 & 32 Vict.  
c. 37.** (3) A byelaw under this Act shall be deemed to be a regulation within the meaning of the Documentary Evidence Act, 1868, and may be proved accordingly.

See also s. 2 of the Military Lands Act, 1900, *post*.

Byelaws  
in case of  
leased land.

**18.**—(1) Where land has been leased under Part One of this Act, a byelaw made in respect of that land shall not be inconsistent with any condition contained in the instrument of lease.

(2) Where land has been leased under Part One of this Act subject to a condition that byelaws relating to the land shall be made with the consent of the lessor, or shall be made by the lessor subject to the approval of the Secretary of State, that condition shall be observed, and the lessor, acting with the approval of the Secretary of State, shall have the same power of making byelaws in relation to the land as is conferred by this Act on the Secretary of State.

The court will grant an injunction to restrain the use of a rifle range by a volunteer corps until it is rendered free from danger to the tenant of a neighbouring land (*Bannister v. Bigge* (1865), 34 Beav. 287).

In an action for an injunction to restrain the commanding officer at Aldershot from using, in such a way as to cause annoyance, a rifle range on Ash Common, which had been acquired by the Crown for military purposes and was vested in the Secretary of State for War, it was held that the Secretary of State for War was a necessary party, and that an action will lie against him for misuser of land vested in him, but an action will not lie against him for the reasonable use of land for military purposes under his direction, even although that use would otherwise have been a nuisance (*Hawley v. Steele* (1877), 6 Ch. D. 521). According to the principle laid down in *Hammersmith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171, the plaintiff in the above case would not be entitled to compensation for such annoyance.

### PART III.

#### SUPPLEMENTAL.

**19.** This Act shall apply in the case of a yeomanry corps as if it were a volunteer corps ; and all land acquired by a yeomanry corps shall vest in the commanding officer of the corps for the time being and his successors in office with power for him to sue and make contracts and conveyances and to do all other lawful acts relating thereto.

**20.** Where any land is acquired under this Act or for military purposes under any Act with which the Lands Clauses Acts are incorporated, the person or authority acquiring the land may require that the compensation to be paid for the land be settled by arbitration and not by reference to a jury, and thereupon the provisions of the Lands Clauses Acts with reference to arbitration shall, if not already applicable, apply for the purpose of settling the compensation.

**21.** Where the Secretary of State certifies that it is necessary for the purposes of coast defence operations that alignment marks should be provided in any places upon the coast, the following provisions shall apply for that purpose :

(a) Any person authorised by the Secretary of State may, after seven days' notice to the owner of the land, enter upon any land for the purpose of erecting, repairing, or replacing such alignment marks, and may do all things necessary for any such purpose, but shall do as little damage to the land as possible.

(b) Full compensation shall be paid to the owner of the land for any damage caused in or by the erection, repair, or replacement of such alignment marks, and in case of dispute the amount of compensation shall be determined by arbitration under the Arbitration Act, 1889 (a).

(c) If any person refuses to permit any authorised person to enter upon any land for the purpose of this section, or obstructs the erection, repair, or replacing of any such alignment marks, or destroys, displaces, damages, or obstructs, any such alignment marks, he shall be liable on summary conviction to a fine not exceeding five pounds.

(a) *Ante*, p. 513.

Application  
of Act to  
yeomanry  
corps.

Power to  
have com-  
pensation  
settled by  
arbitration.

Power to  
enter on  
land to fix  
alignment  
marks.

52 & 53 Vict.  
c. 49.

**Sect. 22.**

Saving for  
acquisition  
of land under  
other Acts.

**22.** All powers given by this Act shall be in addition to any other power to acquire land for military purposes conferred by any Act passed before this Act, and nothing contained in this Act shall prejudicially affect the powers vested in the Secretary of State for War under the Defence Acts and the Acts incorporated therewith.

The principal Acts dealing with the acquisition of land for military purposes besides this Act is the Defence Act, 1842, and the various Acts amending it, for which see Appendix. Power has also been given to purchase land for specific purposes; see, for example, the Military Forces Localisation Act, 1872 (35 & 36 Vict. c. 68), where money was voted for the purpose of building barracks, and power given to take land.

By the Military Tramways Act, 1887 (50 & 51 Vict. c. 65), power may be given by provisional order of the Board of Trade to be confirmed by Parliament to take land for the purpose of tramways.

Interpreta-  
tion.

**23.** In this Act the expression "military purposes" includes rifle or artillery practice, the building and enlarging of barracks and camps, the erection of butts, targets, batteries, and other accommodation, the storing of arms, military drill, and any other purpose connected with military matters approved by the Secretary of State.

In this Act and the enactments incorporated therewith the expression "land" includes any easement in or over lands, and for the purpose of Part One of this Act includes any right of firing over lands or other right of user.

"Land" as herein defined shall also include the bed of the sea or any tidal water, and also any right of interference with the free use of any land. See s. 3 of the Military Lands Act, 1900, *post*.

**24—28.** . . .

Section 24 contains a saving as to the New Forest. Sections 25—27 extend the Act respectively to Scotland, Ireland, and, to a limited extent, the Isle of Man. Section 28 relates to repeals.

Short title.

**29.** This Act may be cited as the Military Lands Act, 1892.

# THE TELEGRAPH ACT, 1892.

(55 & 56 VICT. c. 59.)

*An Act to make further provision respecting Telegraphs.*

[28th June 1892.]

No power was given by any of the previous telegraph Acts, enabling telegraph works to be placed on or over private land without the consent of the owner or occupier. Power is now given by this Act to the Postmaster-General to obtain a provisional order to enable him to construct and maintain such works on private land. As to the power of the Postmaster-General to take lands for the purposes of the Post Office, including telegraphs, see the Post Office (Land) Act, 1881, *ante*, p. 477.

2.—(1) If the Postmaster-General considers that the inhabitants of any district or any public authority are debarred from the public convenience of telegraphic communication owing to the refusal or failure of any person being the occupier, lessee, or owner of any land or building to consent to the construction or maintenance of a work by the Postmaster-General, he may, without prejudice to any other power of proceeding under the Telegraph Acts, 1863 and 1878, or this Act, apply to the Railway and Canal Commission, and that Commission, if satisfied, after holding a local inquiry and giving an opportunity for all persons interested to be heard, that the inhabitants or authority are so debarred as aforesaid, may make an Order consenting to the construction or maintenance of the work either unconditionally or subject to such pecuniary or other terms, conditions and stipulations as the Commission think just, and such consent shall have effect as a consent given by the said person to the construction or maintenance of such work, but subject as aforesaid all the provisions of the Telegraph Act, 1863, shall apply to such work, and such person shall have and enjoy all the protection and benefit of such provisions.

Power of  
Railway and  
Canal Com-  
mission to  
make pro-  
visional order  
for construction  
of work  
on private  
land.

26 & 27 Vict.  
c. 112.

(2) If the said person presents to the Commission, within one month after the service of such Order on him, a petition praying that the Order shall be laid before Parliament, and does not withdraw that petition, such Order shall have no effect until confirmed by Parliament with such modifications (if any) as Parliament may approve or direct; but if such petition is not presented, or though presented is withdrawn, the Railway and Canal Commission shall certify the fact, and after the date of that certificate such Order shall have full effect.

**Sect. 2.**

(3) The Postmaster-General may cause to be introduced into Parliament a public Bill confirming any such Order, and the Order when so confirmed, with any modification made therein by Parliament, shall have full effect.

(4) If while a Bill confirming an Order under this section is pending in either House of Parliament a petition is presented against the Order, the Bill, so far as it relates to that Order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a private Bill.

51 & 52 Vict.  
c. 25.

(5) The Railway and Canal Commission may hold a local inquiry for the purposes of this Act by any one or two of their members, or by any officer of the Commission whom they may direct to hold the same, and Parts One and Four of the Railway and Canal Traffic Act, 1888, except the sections relating to appeal, shall apply as if herein re-enacted and in terms made applicable to the purposes of this section, and any officer appointed to hold the inquiry shall have power to administer an oath.

(6) The Railway and Canal Commission may make an interlocutory order for the continuance of an existing work while proceedings under this section are pending.

This section does not apply to the undertakings of railway and canal companies authorised by Act of Parliament (s. 7).

The Telegraph Act, 1863, mentioned in the above section, is a general Act regulating the construction of telegraphic works. Section 6 of that Act allowed telegraph companies, which since the Telegraph Acts of 1868 and 1869, include the Postmaster-General, to place and maintain telegraphs over or under streets and public roads and lands, buildings, railways, canals, branches of the sea, and shore or beds of tidal rivers, subject to various restrictions, which were to some extent modified by the Telegraph Act, 1878 (41 & 42 Vict. c. 76). In respect of Crown lands and private lands these works could only be done by consent. The principal provisions as to compensation are contained in ss. 7 and 21.

### THE TELEGRAPH ACT, 1863.

Provision  
as to com-  
pensation.

7. In the exercise of the powers given by the last foregoing section the company shall do as little damage as may be, and shall make full compensation to all bodies and persons interested for all damage sustained by them by reason or in consequence of the exercise of such powers; the amount and application of such compensation to be determined in manner provided by the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation (Scotland) Act, 1845, respectively, and any Act amending those Acts, for the determination of the amount and application of compensation for lands taken or injuriously affected.

### *Restrictions as to works affecting private or Crown property.*

As to works  
affecting  
Crown  
property.

21. The company shall not place any work by the side of any land or building, so as to stop, hinder, or interfere with ingress or egress for any purpose to or from the same, or place any work under, in, upon, over, along, or across any land or building, except with the previous consent in every case of the owner, lessee, and occupier of such land or building.

which consent, in case of any land or building belonging to or enjoyed by the Queen's most Excellent Majesty in right of her Crown, may be given by the Commissioners of Woods, or one of them, on behalf of her Majesty: Provided always, that with respect to lands and buildings situate within the limits of the district over which the authority of the Metropolitan Board of Works extends (hereinafter referred to as the Metropolis), or within the limits of any city or municipal borough or town corporate, or any town having a population of thirty thousand inhabitants or upwards, according to the latest census (hereinafter referred to as a city or large town), if the body having the control of any street in the Metropolis or a city or large town, consents to the placing of works by the company in, upon, over, along, or across that street, then and in every such case that consent shall (unless it is otherwise provided by the terms thereof), be sufficient authority for the company, without any further consent, except as to any land or building belonging to or enjoyed by her Majesty in right of her Crown, to place and maintain a telegraph over, along, or across any building adjoining to or near the street, and situate within the limits of the district over which the powers of the consenting body extend, or over, along, or across any land, not being laid out as building land, or not being a garden or pleasure ground, adjoining to or near the street and situate within the same limits, subject nevertheless to the following provisions:

**Sect. 2****NOTE**

- (1) Twenty-one days at least before the company proceeds to place a telegraph by virtue of the authority so conferred, they shall publish a notice stating they have obtained the consent of such body as aforesaid, and describing the intended course of such telegraph:
- (2) Where the company by virtue of the authority so conferred places a telegraph directly over any dwelling-house, they shall not place it at a less height above the roof thereof than six feet, if the owner, lessee, or occupier thereof objects to their placing it at a less height:
- (3) If at any time the owner, lessee, or occupier of any building or land adjoining to a building, directly over which building or land the company by virtue of the authority so conferred places a telegraph, desires to raise the building to a greater height, or to extend it over such land, the company shall increase the height or otherwise alter the position of the telegraph, so that the same may not interfere with the raising or extension of the building, within fourteen days after receiving from the owner, lessee, or occupier a notice of his intention to raise or extend the building, or, in case of difference between the company and the owner, lessee, or occupier as to his intention, then within fourteen days after receiving a certificate, signed by a justice of the peace, certifying that he is satisfied of the intention of the owner, lessee, or occupier to raise or extend the building:
- (4) The company shall make full compensation to the owner, lessee, and occupier of any land or building over, along, or across which the company by virtue of the authority so conferred places a telegraph, and which may be shown to be in any respect prejudicially affected thereby; the amount of such compensation to be determined in manner provided by the said Lands Clauses Consolidation Acts respectively, and any Act amending those Acts for the determination of the amount of compensation with respect to lands injuriously affected:

Provided also, that the consent of any person occupying as a tenant from year to year only shall not be required, nor shall any person so occupying be entitled to such compensation as aforesaid.

## THE ISOLATION HOSPITALS ACT, 1893.

(56 &amp; 57 VICT. c. 68.)

*An Act for enabling County Councils to promote the establishment of Hospitals for the reception of Patients suffering from Infectious Diseases.* [21st December 1893.]

This Act enables county councils in certain districts, upon representations being made as to the necessity for an isolation hospital in any part of the district, to hold an inquiry, and if satisfied of the necessity for such hospital, to constitute a hospital district and appoint a hospital committee. The hospital committee may consist of representatives of the county council whether members of the council or not, and of representatives of the area or wholly of either. This committee shall be a body corporate with a common seal, and capable of acquiring land by devise, gift, purchase or otherwise without license in mortmain. They have powers of acquiring land as herein mentioned.

The Act has been amended by the Isolation Hospitals Act, 1901 (1 Edw. 7, c. 8), but not as to any part material to this subject of compensation.

The Act does not extend to Scotland and Ireland or to the administrative county of London, or to any county borough, or to any borough of a population of 10,000 or upwards without the consent of the council of the borough. As to boroughs below 10,000 population it is not to apply without the like consent unless the Local Government Board by order direct that it shall apply.

\* \* \* \* \*

Purchase of  
land for  
hospital.

38 & 39 Vict.  
c. 55.

11. Subject to any directions given by the county council, a hospital committee may purchase or lease any land, whether within or without the hospital district, for the purpose of erecting thereon an isolation hospital, and may exercise all the powers conferred on a sanitary authority by the provisions of the Public Health Act, 1875, and the Acts amending the same, relating to the purchase of lands. For the purposes of this section the provisions contained in sections one hundred and seventy-five to one hundred and seventy-eight (inclusive), and sections two hundred and ninety-six to two hundred and ninety-eight (inclusive), of the Public Health Act, 1875, shall, so far as consistent herewith, be incorporated with this Act.

Sections 175—178 of the Public Health Act, 1875, will be found, *ante*, pp. 457—462. They contain provisions for acquiring land. The Lands Clauses Acts are incorporated with certain exceptions, but before the compulsory clauses can be put into operation it is necessary to obtain a provisional order. The provisions as to obtaining provisional orders are contained in s. 176, and ss. 296—298 contain further provisions as to the granting of such orders by the Local Government Board.

o o o o o

# THE LOCAL GOVERNMENT ACT, 1894.

(56 & 57 VICT. c. 73.)

*An Act to make further provision for Local Government in England and Wales.* [5th March 1894.]

This Act provides for the creation of parish councils, parish meetings, and urban and rural district councils. In urban districts the urban sanitary authority becomes the urban district council, and a rural district council is formed for each rural sanitary district. It is provided that there shall be a parish council for every rural parish with a population of 300 or upwards, and in parishes of a less population the county council may in certain cases by order provide such council.

\* \* \* \* \*

3.—(9) Every parish council shall be a body corporate by the name of the parish council, with the addition of the name of the parish, or if there is any doubt as to the latter name, of such name as the county council after consultation with the parish meeting of the parish direct, and shall have perpetual succession, and may hold land for the purposes of their powers and duties without license in mortmain ; and any act of the council may be signified by an instrument executed at a meeting of the council, and under the hands or, if an instrument under seal is required, under the hands and seals, of the chairman presiding at the meeting and two other members of the council.

\* \* \* \* \*

9.—(1) For the purpose of the acquisition of land by a parish council the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement (a), and section one hundred and seventy-eight of the Public Health Act, 1875 (b), shall apply as if the parish council were referred to therein. Powers for acquisition of land. 38 & 39 Vict. c. 55.

(a) The excepted provisions are ss. 16—68.

(b) *Ante*, p. 462. That section deals with lands belonging to the Duchy of Lancaster.

(2) If a parish council are unable to acquire by agreement and on reasonable terms suitable land for any purpose for which they are authorised to acquire it, they may represent the case to the

**Sect. 9.** county council, and the county council shall inquire into the representation.

**"Suitable land for any purpose."**—Some of the purposes for which they may acquire land are for buildings and offices, for a recreation ground, and for public walks. They may also make a representation under the Allotments Acts and under the Housing of the Working Classes Act, 1890. Parish councils have also power to adopt the Lighting and Watching Act, 1833; the Baths and Washhouses Acts, 1846 to 1882; the Burial Acts, 1852 to 1885; the Public Improvement Act, 1860; and the Public Libraries Act, 1892. Under these Acts compulsory powers of taking land are not conferred, but apparently land may be acquired compulsorily under this section for the purposes of these Acts.

For the procedure, see the order of the Local Government Board with memorandum, dated May, 1895, No. 32,844. These are set out in Macmorran and Dill's Local Government Act, 1888, and can be had from Messrs. Eyre and Spottiswoode.

(3) If on any such representation, or on any proceeding under the Allotments Acts, 1887 (*a*) and 1890, a county council are satisfied that suitable land for the said purpose of the parish council or for the purpose of allotments (as the case may be), cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to justify the county council in proceeding under this section, they shall cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken as may be prescribed, and all persons interested shall be permitted to attend at the inquiry, and to support or oppose the taking of the land.

(*a*) *Ante*, p. 500. "Prescribed" means prescribed by order of the Local Government Board. As to counsel attending at the inquiry, see sub-s. (11).

(4) After the completion of the inquiry, and considering all objections made by any persons interested, the county council may make an order for putting in force, as respects the said land or any part thereof, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

See as to incorporating the Lands Clauses Acts, sub-s. (10), *infra*.

(5) If the county council refuse to make any such order, the parish council, or, if the proceeding is taken on the petition of the district council, then the district council, may petition the Local Government Board, and that Board after local inquiry may, if they think proper, make the order, and this section shall apply as if the order had been made by the county council. Any order made under this sub-section overruling the decision of the county

council shall be laid before Parliament by the Local Government Board.

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(6) A copy of any order made under this section shall be served in the prescribed manner, together with a statement that the order will become final and have the effect of an Act of Parliament, unless within the prescribed period a memorial by some person interested is presented to the Local Government Board praying that the order shall not become law without further inquiry.

As to the time for presenting such memorial, see Article 5 of the order, mentioned in note to sub-s. (2), *supra*.

(7) The order shall be deposited with the Local Government Board, who shall inquire whether the provisions of this section and the prescribed regulations have been in all respects complied with; and if the Board are satisfied that this has been done, then, after the prescribed period—

- (a) If no memorial has been presented, or if every such memorial has been withdrawn, the Board shall, without further inquiry, confirm the order :
- (b) If a memorial has been presented, the Local Government Board shall proceed to hold a local inquiry, and shall, after such inquiry, either confirm, with or without amendment, or disallow the order :
- (c) Upon any such confirmation the order, and if amended as so amended, shall become final and have the effect of an Act of Parliament, and the confirmation by the Local Government Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made, and is within the powers of this Act.

(8) Sections two hundred and ninety-three to two hundred and ninety-six, and sub-sections (1) and (2) of section two hundred and ninety-seven of the Public Health Act, 1875, shall apply to a local inquiry held by the Local Government Board for the purposes of this section, as if those sections and sub-sections were herein re-enacted, and in terms made applicable to such inquiry.

(9) The order shall be carried into effect, when made on the petition of a district council, by that council, and in any other case by the county council.

(10) Any order made under this section for the purpose of the purchase of land otherwise than by agreement shall incorporate the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, with the necessary

8 & 9 Vict.  
c. 20.

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adaptations, but any question of disputed compensation shall be dealt with in the manner provided by section three of the Allotments Act, 1887, and provisos (a), (b), and (c) of sub-section (4) of that section are incorporated with this section and shall apply accordingly : Provided that in determining the amount of disputed compensation, the arbitrator shall not make any additional allowance in respect of the purchase being compulsory.

Sections 77 to 85 of the Railways Clauses Consolidation Act, 1845, are those relating to mines, *ante*, pp. 328 *et seq.*

See the provisions of the Allotments Act, 1887, *ante*, p. 500. The Local Government Board have issued orders adapting these Acts dated May, 1895.

As to an additional allowance for compulsory purchase, see s. 21 of the Housing of the Working Classes Act, 1890, *ante*, p. 542.

(11) At any inquiry or arbitration held under this section the person or persons holding the inquiry or arbitration shall hear any authorities or parties interested by themselves or their agents, and shall hear witnesses, but shall not, except in such cases as may be prescribed, hear counsel or expert witnesses.

No general order, so far as we are aware, has been made as to hearing counsel or expert witnesses.

(12) The person or persons holding a public inquiry for the purposes of this section on behalf of a county council shall have the same powers as an inspector or inspectors of the Local Government Board when holding a local inquiry ; and section two hundred and ninety-four of the Public Health Act, 1875, shall apply to the costs of inquiries held by the county council for the purpose of this section as if the county council were substituted for the Local Government Board.

(13) Sub-section (2) of section two, if the land is taken for allotments, and, whether it is or is not so taken, sub-sections (5), (6), (7), and (8) of section three of the Allotments Act, 1887 (a), and section eleven of that Act, and section three of the Allotments Act, 1890, are incorporated with this section, and shall, with the prescribed adaptations, apply accordingly.

50 & 51 Vict.  
c. 48.  
53 & 54 Vict.  
c. 65.

(a) *Ante*, p. 500. As to adaptations, see orders of the Local Government Board, May, 1895.

Section 3 of the Allotments Act, 1890, is as follows :

(1) For the purposes of this Act or the principal Act every county council, as soon as is conveniently practicable after the passing of this Act, and annually thereafter at the meeting for the election of chairman, shall appoint under the Local Government Act, 1888, a standing committee not exceeding one-fourth of their whole body.

(2) For the purpose of any business under this Act relating to any district or parish wholly or partly situate in an electoral division, the county

councillor representing that division shall, if not already appointed, be an additional member of the committee.

(3) Any petition under this Act shall as of course, and without any order of the council, be referred to the standing committee, who, on being satisfied of the bona fides of the application, shall forthwith cause a local inquiry into the circumstances to be made, and shall report the result to the council.

(4) An inquiry under this Act or the principal Act shall be held by such one or more members of the standing committee, or such officer of the county council or other person as the standing committee may appoint to hold the same.

(14) Where the land is acquired otherwise than for allotments, it shall be assured to the parish council ; and any land purchased by a county council for allotments under the Allotments Acts, 1887 and 1890, and this Act, or any of them, shall be assured to the parish council, and in that case sections five to eight of the Allotments Act, 1887, shall apply as if the parish council were the sanitary authority.

(15) Nothing in this section shall authorise the parish council to acquire otherwise than by agreement any land for the purpose of any supply of water, or of any right of way.

(16) In this section the expression "allotments" includes common pasture where authorised to be acquired under the Allotments Act, 1887.

(17) Where, under the Allotments Act, 1890, the Allotments Act, 1887, applies to the purchase of land by the county council, that Act shall apply as amended by this section, and the parish council shall have the like power of petitioning the county council as is given to six parliamentary electors by section two of the Allotments Act, 1890.

(18) This section shall apply to a county borough with the necessary modifications, and in particular with the modification that the order shall be both made and confirmed by the Local Government Board and shall be carried into effect by the council of the county borough.

The Local Government Board have modified this section for county boroughs by order dated May, 1895, No. 82,845.

(19) The expenses of a county council incurred under this section shall be defrayed in like manner as in the case of a local inquiry by a county council under this Act.

**10.**—(1) The parish council shall have power to hire land for allotments, and if they are satisfied that allotments are required, and are unable to hire by agreement on reasonable terms suitable land for allotments, they shall represent the case to the county

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**NOTE.**

**Hiring of  
land for  
allotments.**

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council, and the county council may make an order authorising the parish council to hire compulsorily for allotments, for a period not less than fourteen years nor more than thirty-five years, such land in or near the parish as is specified in the order, and the order shall, as respects confirmation and otherwise, be subject to the like provisions as if it were an order of the county council made under the last preceding section of this Act, and that section shall apply as if it were herein re-enacted with the substitution of "hiring" for "purchase" and with the other necessary modifications.

As s. 9 specifies various matters to be prescribed by the Local Government Board, a general order was issued on May 20th, 1895, for that purpose, No. 32,838.

(2) A single arbitrator, who shall be appointed in accordance with the provisions of section three of the Allotments Act, 1887, and to whom the provisions of that section shall apply, shall have power to determine any question—

- (a) as to the terms and conditions of the hiring ; or
- (b) as to the amount of compensation for severance ; or
- (c) as to the compensation to any tenant upon the determination of his tenancy ; or
- (d) as to the apportionment of the rent between the land taken by the parish council and the land not taken from the tenant ; or
- (e) as to any other matter incidental to the hiring of the land by the council, or the surrender thereof at the end of their tenancy ;

but the arbitrator in fixing the rent shall not make any addition in respect of compulsory hiring.

For the Allotments Act, 1887, s. 3, see *ante*, p. 500.

(3) The arbitrator, in fixing rent or other compensation, shall take into consideration all the circumstances connected with the land, and the use to which it might otherwise be put by the owner during the term of hiring, and any depreciation of the value to the tenant of the residue of his holding caused by the withdrawal from the holding of the land hired by the parish council.

(4) Any compensation awarded to a tenant in respect of any depreciation of the value to him of the residue of his holding caused by the withdrawal from the holding of the land hired by the parish council shall as far as possible be provided for by taking such compensation into account in fixing, as the case may require, the rent to be paid by the parish council for the land

hired by them, and the apportioned rent, if any, to be paid by the tenant for that portion of the holding which is not hired by the parish council.

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(5) The award of the arbitrator or a copy thereof, together with a report signed by him as to the condition of the land taken by the parish council, shall be deposited and preserved with the public books, writings, and papers of the parish, and the owner for the time being of the land shall at all reasonable times be at liberty to inspect the same and to take copies thereof.

(6) Save as hereinafter mentioned, sections five to eight of the Allotments Act, 1887, shall apply to any allotment hired by a parish council in like manner as if that council were the sanitary authority and also the allotment managers :

Provided that the parish council—

(a) may let to one person an allotment or allotments exceeding one acre, but, if the land is hired compulsorily, not exceeding in the whole four acres of pasture or one acre of arable and three acres of pasture ; and

(b) may permit to be erected on the allotment any stable, cowhouse, or barn ; and

(c) shall not break up, or permit to be broken up, any permanent pasture, without the assent in writing of the landlord.

(7) On the determination of any tenancy created by compulsory hiring a single arbitrator who shall be appointed in accordance with the provisions of section three of the Allotments Act, 1887 (a), shall have power to determine as to the amount due by the landlord for compensation for improvements, or by the parish council for depreciation, but such compensation shall be assessed in accordance with the provisions of the Agricultural Holdings 46 & 47 Vict. (England) Act, 1883. c. 61.

(a) *Ante*, p. 500.

(8) The order for compulsory hiring may apply, with the prescribed adaptations, such of the provisions of the Lands Clauses Acts (including those relating to the acquisition of land otherwise than by agreement) as appear to the county council or Local Government Board sufficient for carrying into effect the order, and for the protection of the persons interested in the land and of the parish council.

The prescribed adaptations are contained in Order No. 32,841 of the Local Government Board, dated May 21st, 1895. This order will be found in Macmorran and Dill's Local Government Act, 1888 (2nd ed.), or can be obtained from Messrs. Eyre and Spottiswoode.

**Sect. 10.**

(9) Nothing in this section shall authorise the compulsory hiring of any mines or minerals, or confer any right to take, sell, or carry away any gravel, sand, or clay, or authorise the hiring of any land which is already owned or occupied as a small holding within the meaning of the Small Holdings Act, 1892.

55 & 56 Vict.  
c. 31.

(10) If the land hired under this section shall at any time during the tenancy thereof by the parish council be shown to the satisfaction of the county council to be required by the landlord for the purpose of working and getting the mines, minerals, or surface minerals thereunder, or for any road or work to be used in connection with such working or getting, it shall be lawful for the landlord of such land to resume possession thereof upon giving to the parish council twelve calendar months previous notice in writing of his intention so to do, and upon such resumption the landlord shall pay to the parish council and to the allotment holders of the land for the time being such sum by way of compensation for the loss of such land for the purposes of allotments as may be agreed upon by the landlord and the parish council, or in default of such agreement as may be awarded by a single arbitrator to be appointed in accordance with the provisions of section three of the Allotments Act, 1887, and the provisions of that section shall apply to such arbitrator.

The word "landlord" in this sub-section means the person for the time being entitled to receive the rent of the land hired by the parish council.

(11) The Local Government Board shall annually lay before Parliament a report of any proceedings under this and the preceding section.

\* \* \* \* \*

## THE DISEASES OF ANIMALS ACT, 1894.

(57 & 58 VICT. c. 57.)

*An Act to consolidate the Contagious Diseases (Animals) Acts, 1878 to 1893.* [25th August 1894.]

This Act consolidates the provisions for enabling local authorities to prevent the spread of contagious diseases among cattle, sheep, goats, and swine.

\* \* \* \* \*

3. The local authorities in England and Wales shall be—

(i) for each borough not being a borough to which section thirty-nine of the Local Government Act, 1888, applies, the borough council ;

Local authorities in England and Wales. 51 & 52 Vict. c. 41.

(ii) for the residue of each administrative county, the county council.

Provided that the mayor and commonalty and citizens of the city of London, acting by the mayor, aldermen, and commons of that city in common council assembled, shall be the local authority for the city of London, and shall be the local authority in and for the county of London for the purpose of the provisions of this Act relating to foreign animals.

\* \* \* \* \*

32.—(1) A local authority may provide, erect, and fit up wharves, stations, lairs, sheds, and other places for the landing, reception, keeping, sale, slaughter, or disposal of foreign or other animals, carcasses, fodder, litter, dung, and other things.

Provision of wharves, stations, lairs, etc.

(2) There shall be incorporated with this Act the Markets and Fairs Clauses Act, 1847 (a), except sections six to nine and fifty-one to sixty thereof.

10 & 11 Vict. c. 14.

(3) A wharf or other place provided by a local authority under this section shall be a market within that Act ; and this Act shall be the special Act. . . .

(a) See *ante*, p. 344.

As to providing dipping places for sheep, see the Diseases of Animals Act, 1903 (3 Edw. 7, c. 43).

33.—(1) A local authority may purchase, or may by agreement take on lease or at a rent, land for wharves or other places,

Power for local authority to acquire land.

**Sect. 33.** or for use for burial of carcasses, in cases where there is not any ground suitable in that behalf in the possession or occupation of the owner of the animal, or any common or uninclosed land suitable and approved by the Board of Agriculture in that behalf, or for any other purpose of this Act.

(2) The local authority may (subject to any agreement) dispose of lands so acquired but not required for the purposes of this Act, carrying the money produced thereby to the credit of the local rate.

(3) The regulations contained in section one hundred and seventy-six of the Public Health Act, 1875, shall be observed with respect to the purchase of land by a local authority for purposes of this Act, as if the local authority were a local board, and purposes of this Act were purposes of that Act; provided that the requisite advertisements and notices may be published and served in any two consecutive months, and that the local rate shall be substituted for the rates therein mentioned.

(4) The powers conferred by this section may be exercised by a local authority with respect to land within or without their district.

Section 176 of the Public Health Act, 1875, referred to in sub-s. (3), incorporates the Lands Clauses Acts, and contains provisions for obtaining provisional orders when it is desired to purchase land compulsorily. See that section, *ante*, p. 457.

° ° ° ° °

## THE MERCHANT SHIPPING ACT, 1894.

(57 & 58 VICT. c. 60.)

*An Act to consolidate Enactments relating to Merchant Shipping.*  
[25th August 1894.]

° ° ° ° °

**639.**—(1) A general lighthouse authority may take and Powers as purchase any land which may be necessary for the exercise of to land. their lighthouse powers, or for the maintenance of their works or for the residence of the light keepers, and for that purpose the Lands Clauses Acts shall be incorporated with this Act and shall apply to all lighthouses to be constructed and all land to be purchased under the powers thereof.

(2) A general lighthouse authority may sell any land belonging to them.

Part XI. of this Act deals with lighthouses. The general lighthouse authority in England and Wales and the Channel Islands and adjacent seas and islands is the Trinity House. The general lighthouse authority has power to erect or place any lighthouse with all requisite works, roads, and appurtenances; to add to, alter, or remove any lighthouse; to erect or place any buoy or beacon; or alter or remove them; and to vary the character of any lighthouse (s. 638).

The Trinity House was incorporated by a charter of Hen. 8; it is not a department of the State (*Gilbert v. Trinity House Corporation* (1886), 17 Q. B. D. 795).

° ° ° ° °

## THE LANDS CLAUSES (TAXATION OF COSTS) ACT, 1895.

(58 & 59 VICT. c. 11.)

*An Act to amend the Law relating to the Taxation of Costs under the Lands Clauses Acts.* [14th May 1895.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Fees for  
taxing costs  
in compensa-  
tion inquiries  
and arbitra-  
tions.  
8 & 9 Vict.  
c. 18.

1.—(1) Where under the Lands Clauses Consolidation Act, 1845, or any Act incorporating the same, any question of disputed compensation is determined by the verdict of a jury, or by arbitration, the costs of and incidental to the inquiry or to the arbitration and award (as the case may be), shall, if either party so requires, be taxed and settled as between the parties by one of the masters of the Supreme Court, and such fees shall be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be taken in the offices of those masters ; and all those enactments (including the enactments relating to the taking of fees by means of stamps) shall extend to the fees in respect of such taxation.

31 & 32 Vict.  
c. 119.  
32 & 33 Vict.  
c. 18.

(2) Section forty-five of the Regulation of Railways Act, 1868, and section one of the Lands Clauses Consolidation Act, 1869, are hereby repealed.

There is now one taxing department for the King's Bench and Chancery Divisions under the name of the Supreme Court Taxing Office, and masters formerly belonging to either division can tax costs under this Act, and not merely a former master of the King's Bench Division (*Corington v. Metropolitan District Rail. Co.*, Times, December 22nd, 1902).

As to taxation of costs when the question is settled by a jury, see the Lands Clauses Consolidation Act, 1845, s. 53, *ante*, p. 90 ; when settled by arbitration, see s. 1 of the Lands Clauses Consolidation Act, 1869, *ante*, p. 446, which is hereby repealed, but in effect re-enacted. The cases on taxation of costs under that section will still be applicable, and are here referred to.

A *mandamus* will lie to compel a master to tax the costs, if he refuse jurisdiction altogether (*Fitzhardinge v. Gloucester and Berkeley Canal Co.* (1872), L. R. 7 Q. B. 776 ; *Gray v. North Eastern Rail. Co.* (1876), 1 Q. B. D. 696 ; *Sandback Trustees v. North Staffordshire Rail. Co.* (1877), 3 Q. B. D. 1 ; *Metropolitan District Rail. Co. v. Sharpe* (1880), 5 App. Cas. 425, p. 444). But if a master exercise his jurisdiction, although wrongly.

a writ of *certiorari* will not issue to quash the taxation because the master has jurisdiction (*Sandback Trustees v. North Staffordshire Rail. Co.*, *supra*).

Nor has the court jurisdiction to review the master's taxation because he is not acting as an officer of the court, to whom the court has delegated the office of taxing costs as in ordinary cases, but under this Act he is not acting as master but as a person designated by the Act (*S. C.*, following the principle laid down in *Owen v. London and North Western Rail. Co.* (1867), L. R. 3 Q. B. 54, a case under s. 52 of the Lands Clauses Consolidation Act, 1845).

If the master allows costs to one of the parties where the statute does not give them, or disallows them where the statute gives them, the court could probably interfere by *certiorari* or *mandamus* (*Owen v. London and North Western Rail. Co.*, *supra*).

These cases were followed in *Earl of Shrewsbury v. Wirral Railway's Committee*, [1895] 2 Ch. 812. The court there seem to have doubted if there was any remedy, but if any it was either by *mandamus* or *certiorari*.

This section does not apply to taxing the costs of arbitrations which embrace matters that could not be the subject of arbitration under the Lands Clauses Consolidation Act, 1845, except by agreement, and it does not apparently apply to agreements entered into before the passing of this statute (*Doulton v. Metropolitan Board of Works* (1870), L. R. 5 Q. B. 333). LUSH, J., in that case, said that this section "can only be taken to apply to arbitrations pure and simple begun and carried out under the Lands Clauses Acts." This must, however, be taken subject to the qualification laid down in *Metropolitan District Rail. Co. v. Sharpe* (1880), 5 App. Cas. 425, that the arbitration clauses of the Lands Clauses Acts apply to arbitrations under special Acts, even where the special Act provides another method of arbitration, but otherwise incorporates the Lands Clauses Acts.

An action can be brought to recover the costs although the amount of such costs has not been previously ascertained by taxation, and an order for taxation on giving judgment for the plaintiff in such an action is valid (*Metropolitan District Rail. Co. v. Sharpe* (1880), 5 App. Cas. 425).

In a case where after the arbitrators and umpire had been appointed but before the award, the parties agreed that the promoters of the undertaking should have immediate possession, and that they should pay all the costs of the landowner of and incidental to the agreement, the reference, and the conveyance, including valuer's, surveyor's and solicitor's charges, as between solicitor and client, it was held that the parties had contracted themselves out of the 1869 Act, but that the costs under the agreement might be taxed under the Attorneys and Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 38 (*Wombwell v. Corporation of Barnsley* (1877), 36 L. T. (N.S.) 708).

Upon a reference between a company and a landowner as to the value of land taken, if the umpire direct that the company should pay the costs of the award, including therein the costs of preparing the award, and the company take up the award and pay the umpire's fees, including those costs which were the costs of solicitors employed by him to draw up the award, the company can have the solicitor's bill taxed under s. 38 of the Solicitors Act, 1843 (*In re Collyer, Bristow & Co.*, [1901] 2 K. B. 839).

Section 2 of the Arbitration Act, 1889 (52 & 53 Vict. c. 49), incorporates into all submissions, unless a contrary intention is expressed, the provisions in Schedule I. Proviso (i) of that Schedule deals with costs, and enables the arbitrator to settle them, which he must do in the award. In case he does not, they will be liable to be taxed in the usual course (*In re Prebble and Robinson*, [1892] 2 Q. B. 602). The arbitrator's own fees in such a case are liable to be taxed (*S. C.*). As to recovering fees paid to an umpire in excess of the amount allowed on taxation, see *Llanindod Wells Water Co. v. Hawksley and Others* (1903), 19 T. L. R. 402.

Sect. 1.

NOTE.

**Sect. 1.**

The taxation of a master under the Arbitration Act, 1889, is liable to review (*Malvern Urban Council v. Malvern Link Gas Co.* (1900), 83 L. T. 321).

**NOTE.**

If the claimant, during arbitration proceedings under the Lands Clauses Acts, employs a person to act as solicitor who is not duly qualified, neither the person so acting nor the claimant can recover his costs and disbursements from the promoters, who would otherwise be liable, and it does not matter whether the claimant knew of the want of qualification or not, as the provision in the Attorneys and Solicitors Act, 1874 (37 & 38 Vict. c. 62), s. 12, is clear that no such costs or disbursements "shall be recoverable in any action, suit, or matter, by any person or persons whomsoever." The court, therefore, in such a case, refused to make absolute a rule *nisi* obtained to compel the taxing master by a *mandamus* to tax the costs (*Fowler v. Monmouthshire Railway and Canal Co.* (1879), 4 Q. B. D. 335).

The master will not be compelled to tax the costs in a case where the claimant is not entitled to them, as, for example, in a case where the arbitrator has awarded less than the amount offered by the promoters (*Fitzhardinge v. Gloucester and Berkeley Canal Co.* (1872), L. R. 7 Q. B. 776).

As to court fees, see the Order as to Supreme Court Fees, 1884, and Order as to Stamps of July 4th, 1884.

**Short title.**

**2.** This Act may be cited as the Lands Clauses (Taxation of Costs) Act, 1895.

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## THE NAVAL WORKS ACT, 1895.

(58 & 59 VICT. c. 35.)

*An Act to make provision for the construction of works in the United Kingdom and elsewhere for the purpose of the Royal Navy, and to amend the law relating to the acquisition of land for Naval purposes.* [6th July 1895.]

This Act, while dealing with specific works, is important as extending to the Admiralty and the Naval Forces, the powers already conferred on the Secretary of State for War by the Defence Act, 1842, *post*, and the Military Lands Act, 1892, *ante*, p. 580, which latter has been amended by the Military Lands Act, 1900, *post*, p. 628, and the Military Lands Act, 1903. Other powers of the Admiralty to take lands will be found in the Admiralty Lands and Works Act, 1864, *ante*, p. 430, and in the Admiralty (Signal Stations) Act, 1815, *post*.

WHEREAS it is expedient to make provision for the construction of the works specified in the schedule to this Act both in the United Kingdom and in the colonies in the schedule mentioned :

And whereas by the Defence Act, 1842, and the enactments 5 & 6 Vict. c. 94. amending the same (in this Act referred to as the Defence Acts), and by the Military Lands Act, 1892, powers are conferred on a 55 & 56 Vict. c. 43. Secretary of State for the acquisition of land for the defence of the realm, and for the military purposes of any portion of her Majesty's military forces, and it is expedient to extend those Acts to the Admiralty and her Majesty's naval forces :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The Admiralty may forthwith proceed to construct the works as specified in the schedule to this Act at the places therein mentioned, and for that purpose may acquire such lands and execute such works as they may deem expedient. Power for Admiralty to construct scheduled works.

2.—(1) With a view to the purchase of land in the United Kingdom for the purposes of this Act, or for any purpose of her Majesty's Navy, the Defence Acts, and the Military Lands Act, 1892, except so far as it relates to a volunteer corps, shall have effect as if they were herein re-enacted with the substitution of the Admiralty for a Secretary of State, and for the principal Powers of Admiralty as to purchase of land. 5 & 6 Vict. c. 94. 36 & 37 Vict. c. 72. 55 & 56 Vict. c. 43.

**Sect. 2.** officers of her Majesty's Ordnance, and for the Ordnance Department, and of naval for military, and naval service for ordnance service.

(2) All land acquired by the Admiralty in pursuance of this Act shall vest and be managed under the Admiralty Lands and Works Act, 1864, and sections nine to nineteen of that Act shall apply accordingly, and the provisions of the Defence Act, 1842, for the like purpose shall not apply.

27 & 28 Vict.  
c. 57.  
5 & 6 Vict.  
c. 94.

Sections 3—6 deal with the provision of funds and with accounts.

\* \* \* \* \*

Short title. **7.** This Act may be cited as the Naval Works Act, 1895.

## THE LIGHT RAILWAYS ACT, 1896.

(59 & 60 VICT. c. 48.)

*An Act to facilitate the construction of Light Railways in Great Britain.* [14th August 1896.]

This Act was intended to encourage the construction of light railways by creating a simpler and cheaper method for granting the necessary powers. Light railway commissioners were appointed whose duty it is to hold local inquiries and to grant provisional orders. These orders are submitted to the Board of Trade for confirmation, and that Board may hear further objections. On confirmation the orders have the effect of an Act of Parliament (s. 10). The powers of the commissioners were to cease on December 31st, 1901, but they have been continued by the Expiring Laws Continuance Acts, 1901 to 1903. Applications for orders may be made by county, borough or district councils by companies or individuals. Rules have been made in 1896 and 1898 by the Board of Trade regulating the procedure under the Act.

The following provisions relate more particularly to questions of compensation.

11. An order under this Act may contain provisions consistent with this Act for all or any of the following purposes—

Provisions which may be made by the order.

- (a) the incorporation, subject to such exceptions and variations as may be mentioned in the order, of all or any of the provisions of the Lands Clauses Acts as defined by this Act. Provided that where it appears to the Board of Trade that variations of the Lands Clauses Acts are required by the special circumstances of the case, the Board of Trade shall make a special report to Parliament on the subject, and that nothing in this section shall authorise any variation of the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement ; . . .

The Lands Clauses Acts are defined in s. 28, *post*, p. 614. The sections of the Lands Clauses Act, 1845, which may not be varied are ss. 16—68. They are, however, very substantially varied by s. 13 of this Act. Section 14, *post*, p. 613, also authorises a variation in s. 69. Section 92, relating to the taking of the whole of a house, will apply unless expressly varied.

12.—(1) The Lands Clauses Acts, as defined by this Act, and the enactments mentioned in the Second Schedule to this Act, shall not apply to a light railway authorised under this Act except so

Application of general railway Acts.

**Sect. 12.** far as they are incorporated or applied by the order authorising the railway.

5 & 6 Vict.  
c. 79.

(2) Subject to the foregoing provisions of this Act and to any special provisions contained in the order authorising the railway, the general enactments relating to railways shall apply to a light railway under this Act in like manner as they apply to any other railway; and for the purposes of those enactments, and of the *Clauses Acts* so far as they are incorporated or applied by the order authorising the railway, the light railway company shall be deemed a railway company, and the order under this Act a special Act, and any provision thereof a special enactment. Provided that a light railway shall not be deemed to be a railway within the meaning of the *Railway Passenger Duty Act, 1842*, and that no duties shall hereafter be levied in respect of passengers conveyed on a light railway constructed under this Act in respect of the conveyance of such passengers upon such railway.

The *Clauses Acts* are defined in s. 28, *post*, p. 614. The enactments mentioned in the schedule relate to safety.

Mode of  
settling pur-  
chase money  
and compen-  
sation for  
taking of  
land.

**13.**—(1) Where any order under this Act incorporates the *Lands Clauses Acts*, any matter which under those Acts may be determined by the verdict of a jury, by arbitration, or by two justices, shall for the purposes of the order be referred to and determined by a single arbitrator appointed by the parties, or if the parties do not concur in the appointment of a single arbitrator then by the Board of Trade, and the provisions of this Act shall apply with respect to the determination of any such matter in lieu of those of the *Lands Clauses Acts* relating thereto. Provided that in determining the amount of compensation, the arbitrator shall have regard to the extent to which the remaining and contiguous lands and hereditaments belonging to the same proprietor may be benefited by the proposed light railway.

(2) The Board of Trade may, with the concurrence of the Lord Chancellor, make rules fixing a scale of costs to be applicable on any such arbitration, and may, by such rules, limit the cases in which the costs of counsel are to be allowed.

52 & 53 Vict.  
c. 49.

(3) The *Arbitration Act, 1889*, shall apply to any arbitration under this section.

As to the incorporation of the *Lands Clauses Acts*, see s. 11. The above provision will enable the arbitrator to settle disputes as to the apportionment of rentcharges, of copyhold rents, of rents due under leases, and also as to the compensation to be paid for the temporary occupation of land under ss. 30—44 of the *Railways Clauses Consolidation Act, ante*, pp. 299 *et seq.*

The Board of Trade have made rules fixing a scale of costs (see *post*). Costs are to be taxed according to the amount awarded. Counsel's fees

may be allowed if the amount awarded is over £300 as the taxing master may see fit (see Scale 2 (c), *post*, p. 617), and are apparently to be allowed in all cases where the amount exceeds £500.

The Arbitration Act, 1889, applies to all arbitrations under the Lands Clauses Acts, save in so far as it is inconsistent therewith. It is not quite clear as to whether the Arbitration Act or the Lands Clauses Act is to prevail in cases in which they are inconsistent. The question may arise as to whether the costs are to be governed by s. 34 of the Lands Clauses Consolidation Act, 1845, or Sched. I. (2) of the Arbitration Act.

**Sect. 13.**

NOTE.

**14.** Any order under this Act may, notwithstanding anything in the Lands Clauses Acts, authorise the payment to trustees of any purchase money or compensation not exceeding five hundred pounds.

In s. 69 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 131, the limit is £200. Sums between £20 and £500 paid under this Act may, therefore, be dealt with as provided in s. 71 of the Lands Clauses Consolidation Act, *ante*, p. 163.

\* \* \* \* \*

**19.**—(1) Where any person has power, either by statute or otherwise, to sell and convey any land for the purpose of any works of a light railway, he may, with the sanction of the Board of Agriculture given under this section, convey the land for that purpose either without payment of any purchase money or compensation or at a price less than the real value, and may so convey it free from all incumbrances thereon.

Power of owners to grant land or advance money for a light railway.

(2) Whenever any person who is a landowner within the meaning of the Improvement of Land Act, 1864, contributes any money for the purpose of any works of a light railway, the amount so contributed may, with the sanction of the Board of Agriculture given under this section, be charged on the land of the landowner improved by the works in the same manner and with the like effect as in the case of a charge under that Act.

27 & 28 Vict. c. 114.

(3) The Board of Agriculture shall not give their sanction under this section unless they are satisfied that the works for which the land is conveyed or the money is contributed will effect a permanent increase in the value of the land held by the same title or of other land of the same landowner exceeding, in the case of a conveyance of land, that which is, in the opinion of the Board of Agriculture, the real value of the land conveyed or the difference between that value and the price, as the case may be, and in the case of a contribution of money the amount contributed: Provided also, that if the land proposed to be conveyed is subject to incumbrances, the Board of Agriculture, before giving their

**Sect. 19.** — sanction under this section, shall cause notice to be given to the incumbrancers, and shall consider the objections, if any, raised by them.

Limited owners are authorised to sell under ss. 7—9 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 16—21, and under many other Acts, such as the Settled Land Acts. Under these Acts they ought to obtain the best price.

Power to  
grant Crown  
lands.

**20.** The Commissioners of Woods shall, on behalf of her Majesty, have the like powers to convey Crown lands as are by this Act conferred upon persons having power, either by statute or otherwise, to sell and convey lands, except that in the case of Crown lands the sanction of the Treasury shall be substituted for the sanction of the Board of Agriculture.

Provision as  
to commons.

**21.**—(1) No land being part of any common, and no easement over or affecting any common, shall be purchased, taken, or acquired under this Act without the consent of the Board of Agriculture, and the Board shall not give their consent unless they are satisfied that, regard being had to all the circumstances of the case, such purchase, taking, or acquisition is necessary, that the exercise of the powers conferred by the order authorising the railway will not cause any greater injury to the common than is necessary, and that all proper steps have been taken in the interest of the commoners and of the public to add other land to the common (where this can be done) in lieu of the land taken, and where a common is divided to secure convenient access from one part of the common to the other.

(2) The expression “common” in this section shall include any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, any metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 to 1878, and any town or village green.

See also the Commons Act, 1899, s. 22, *post*.

\* \* \* \* \*

Definitions.

**28.** In this Act, unless the context otherwise requires,—

The expression “light railway company” includes any person or body of persons, whether incorporated or not, who are authorised to construct, or are owners or lessees of, any light railway authorised by this Act, or who are working the same under any working agreement :

The expression “Clauses Acts” means the Lands Clauses Acts, the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Act, 1863, and the Companies Clauses Acts, 1845 to 1889 :

The expression "share capital" includes any capital, whether consisting of shares or of stock, which is not raised by means of borrowing. Sect. 28.

29. This Act may be cited as the Light Railways Act, 1896. Short title.

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## THE LIGHT RAILWAYS (COSTS) RULES, 1898.

RULES DATED MAY 27, 1898, MADE BY THE BOARD OF TRADE,  
WITH THE CONCURRENCE OF THE LORD CHANCELLOR, PURSUANT  
TO THE THIRTEENTH SECTION OF THE LIGHT RAILWAYS ACT,  
1896.

The following rules, and the scales of costs contained therein, shall apply to the allowance and taxation as against a light railway company of all costs and charges of a claimant in an arbitration.

1. Where the compensation awarded by the arbitrator to the claimant does not exceed the sum specified in the first column of the Scale No. 1 hereunder contained, the sum payable to the claimant for his costs of the arbitration shall be the sum specified in the second column of such scale, which sum shall include and cover all disbursements, except for the attendances of witnesses, for which attendances the sums specified in the third column of such scale shall be allowed. No charge for briefs to, or attendance of, counsel shall be allowed.

2. Where the compensation awarded by the arbitrator exceeds the sum of three hundred pounds, but does not exceed the sum of five hundred pounds, the costs and charges of the claimant in the arbitration shall be allowed and (if necessary) taxed, in accordance with the provisions of the Scale No. 2 hereunder contained, and no other costs or charges other than those specified in such scale, or allowed in accordance therewith, shall be allowed.

3. Where the compensation awarded by the arbitrator exceeds the sum of five hundred pounds, the costs and charges of the claimant in the arbitration shall be taxed and allowed in accordance with the provisions of the Scale No. 3 hereunder contained, and no other costs or charges other than those specified in such scale, or allowed in accordance therewith, shall be allowed.

4. For the purpose of ascertaining the scale on which the costs of the claimant in the arbitration are to be allowed, the amount of compensation awarded by the arbitrator shall comprise and include the sum or sums awarded by the arbitrator in respect of any lands or interest in lands taken for or injuriously affected by the execution of works under the Act, or any order made under the Act, and also all such amounts (if any) as may be deducted by the arbitrator in arriving at such sum or sums in respect of the permanent increase of value to the remaining and contiguous lands and hereditaments of the same proprietor, and the expenses of any

**Rules.**

accommodation works which may be prescribed by the award or which the light railway company may have agreed to construct for the protection or advantage of the claimant; and the arbitrator shall, if required so to do by either party to the arbitration, certify the amounts of such deductions and expenses.

5. So much of the First Schedule to the Arbitration Act, 1889, as provides that the arbitrator may award costs to be paid as between solicitor and client, shall not apply to an arbitration to which these rules apply. In any case in which the arbitrator taxes or settles the amount of costs to be paid to the claimant in the arbitration, these rules and the scales hereunder contained, shall apply to and govern such taxation and settlement of such costs by the arbitrator.

6. These rules and the scales of costs contained herein shall not apply to the fees or remuneration properly payable to or charged by the arbitrator, which fees, if and when paid by the claimant, shall be recoverable by him from the party who is directed or liable to pay the same.

7. In these rules and scales of costs :

- (1) "The Act" means the Light Railways Act, 1896.
- (2) "The arbitrator" means an arbitrator appointed under the thirteenth section of the Act.
- (3) "Taxing officer" includes the arbitrator when costs are taxed and settled by him.
- (4) "Light railway company" has the same meaning as such expression has in the Act.

8. These rules shall commence and come into operation on the 27th day of May, 1898, and may be cited as the Light Railways (Costs) Rules, 1898.

**SCALE No. 1.**

Scale of fixed costs where the compensation awarded does not exceed £300.

Compensation awarded.	Amount of costs other than for Witnesses.	Costs of attendance of Witnesses.
	£ s. d.	£ s. d.
Any sum not exceeding fifty pounds -	3 3 0	2 2 0
Any sum exceeding fifty pounds, but not exceeding one hundred pounds -	5 5 0	3 3 0
Any sum exceeding one hundred pounds, but not exceeding three hundred pounds :		
For every fifty pounds or part of fifty pounds exceeding one hun- dred pounds the following sums in addition to those prescribed for compensation which exceeds fifty pounds - - - -	2 2 0	1 1 0

Rules.

SCALE No. 2.

Costs where the compensation awarded exceeds £300, but does not exceed £500.

- (a) The amount payable to the claimant for the costs of the arbitration shall be the sum of £20, which sum shall include all charges and disbursements of every kind, except those hereinafter specially mentioned.
- (b) In addition to the said sum of £20, there shall be allowed to the claimant the charges and expenses of and incurred in obtaining the evidence and attendance of one expert witness as to the value of the claimant's lands, or interest in land, or the amount of compensation to which the claimant is entitled: which charges and expenses shall be taxed and allowed in accordance with the provisions of Scale 3, hereinafter contained.
- (c) If counsel is employed by the claimant, there shall be allowed to him, in addition, for preparing and delivering briefs to and obtaining the attendance of counsel, such fees as, having regard to all the circumstances of the case, the taxing officer shall think fit.

SCALE No. 3.

Scale of costs and allowance where the compensation exceeds five hundred pounds:

	£	s.	d.
1. Instructions for claim and attendances on owner or claimant in respect thereof	1	1	0
2. Correspondence and attendance on the light railway company's solicitors thereon, including drawing and copy claim	1	1	0
3. Attendances on them agreeing upon arbitrator or that the arbitrator should be appointed by the Board of Trade	0	13	4
4. Attending on each witness (of two witnesses) instructing him to qualify and subsequently perusing his report, or if the arbitrator is a surveyor on one witness only	0	13	4
5. Attending on the arbitrator and on the company's solicitor arranging appointment for the day of hearing	0	13	4
6. Notice to each witness to attend	0	5	0
7. If a view is reasonably necessary attendances on arbitrator and company's solicitor arranging for view	0	13	4
8. Attending view with them	3	3	0
9. Paid travelling expenses	—	—	—
10. If counsel employed, instructions to counsel to attend view	0	6	8
11. Paid his fee and clerk	5	10	0
12. Instructions for attending before the arbitrator and to conduct the claimant's case	2	2	0
13. If counsel employed in lieu of last item, instructions for brief	2	2	0
14. Drawing case and minutes of evidence, at per folio, 1s.; and if counsel attending, brief copy for counsel, at per folio, 4d.			
15. Paid counsel's fee	—	—	—

**Rules.**

	£	s.	d.
16. Attending him - - - - -	0	6	8
17. Paid counsel's conference fee - - - - -	1	6	0
18. Attending conference - - - - -	0	13	4
19. Solicitor attending reference and conducting case, case completed on each side (solicitor and clerk) - - -	5	5	0
20. If reference not held in town in which the solicitor carries on business, for hotel expenses of solicitor - - -	1	1	0
Do. do. of clerk - - -	0	15	0
(And for travelling expenses the sum actually paid.)			
21. If reference not concluded, for each subsequent day the same charges.			
22. If counsel in attendance, solicitor attending each day on reference - - - - -	3	3	0
23. And if not in solicitor's town, for hotel expenses (and travelling expenses actually paid) - - - - -	1	1	0
24. Paid witnesses (according to the scale in use by the Masters in the Queen's Bench Division).			
25. Drawing bill of costs and copy for taxing, at per folio, 8 <i>d.</i>			
26. Copy for the railway company's solicitor, at per folio, 4 <i>d.</i>			
27. Notice of taxing - - - - -	0	4	0
28. Attending taxing - - - - -	0	13	4
29. Paid taxing (the fee payable on the Queen's Bench Division on taxing costs).			
30. Letters and messengers - - - - -	1	1	0
31. In agency cases for correspondence between solicitor and London agent - - - - -	1	1	0

In other than ordinary cases the taxing officer may increase or diminish any of the above charges if for any special reasons he shall think fit.

CHAS. T. RITCHIE,  
President of the Board of Trade.

I concur,  
HALSBURY, C.  
Dated the 27th day of May, 1898.

## THE MILITARY MANŒUVRES ACT, 1897.

(60 & 61 VICT. c. 43.)

*An Act to facilitate Military Manœuvres.* [6th August 1897.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1.—(1) Her Majesty may, by Order in Council, authorise the execution of military manœuvres within specified limits and during a specified period not exceeding three months. Power to authorise execution of military manœuvres. Provided that the same limits, or any part thereof, shall not be specified more than once in any period of five years.

(2) Whenever it is proposed to make any such order a draft thereof shall, not less than six months before the order is to come into force, be sent to the council of each county, county borough, district, and parish, wholly or partly within the specified limits, and in the case of the New Forest to the court of verderers ; and notice of this intention to make the order shall, not less than three months before the order is to come into force, be advertised in at least two newspapers circulating generally within the district.

(3) The draft order shall not be submitted to her Majesty in Council until it has lain before each House of Parliament for thirty days on which that House is sitting, nor unless each House presents an address to her Majesty praying that the order may be made.

2. Where an Order in Council under this Act authorises the execution of military manœuvres, such persons as are under the authority of her Majesty engaged in the manœuvres (in this Act referred to as the authorised forces) may under the direction of the Secretary of State within the specified limits and during the specified period, Powers exercisable for purposes of manœuvres.

(a) pass over, and encamp, construct military works, not of a permanent character, and execute military manœuvres on any authorised land ; and

**Sect. 2.**

- (b) supply themselves with water from any authorised sources of water, and, for that purpose, dam up any running water. Provided always, that such damming up of water does not interfere with the carrying on of any trade or industry, and that nothing in this Act shall authorise the taking of water from any source of supply belonging to a private owner, or public authority, except subject to the supply shown to be required by those entitled to use such water supply.

Provided as follows—

- (1) Nothing in this Act shall authorise entry on or interference with (except to the extent of using authorised roads) any dwelling-house, place of worship, school, factory, workshop, store or premises, used for the carrying on of any trade, business, or manufacture, farmyard, garden, orchard, pleasure ground or nursery ground, burial ground, ground attached to any place of worship, or school, or any premises enclosed within the curtilage of or attached to any dwelling-house, or any enclosed wood or plantation.
- (2) The officer in command of the authorised forces shall take care that there is no interference with earthworks, ruins, or other remains of antiquarian or historical interest, or with any picturesque or valuable timber, or other natural features of exceptional interest or beauty, and shall be empowered to prevent trespass or damage to property by persons not belonging to the forces, and shall cause all lands used under the powers conferred by this Act to be restored as soon and as far as practicable to their previous condition.
- (3) Subject to the provisions of this Act with respect to—
  - (a) the closing of roads and footpaths ; and
  - (b) obstruction of or interference with military manœuvres ; and
  - (c) entering or remaining in a camp,
 nothing in this Act shall prejudicially affect any public right or any right of common.

Power to  
close roads.

**3.**—(1) Two justices of the peace, not being military officers in command of the forces, may, if they shall think fit, on the application of a commissioned officer in command of the authorised forces or of part thereof, by order, suspend, for a time not exceeding forty-eight hours, any right of way over any road

**Sect. 3.**

or footpath within the specified limits and within their jurisdiction. Provided that any such order shall only be made with regard to any county, or main, or parish, road by at least two justices, not being military officers in command of the forces, sitting in petty sessions in the petty sessional division or divisions within which such road or part of road to be stopped is situate, and for a time not exceeding twelve hours, and after seven days notice of such intended application published in at least one newspaper circulating generally in the district, and subject to such terms and conditions as may be required by the said justices for the protection of individuals or of the public or of public bodies.

(2) The officer in command of the authorised forces shall cause such public notice of the order as the justices may require to be given not less than twelve hours before the order comes into force, and shall give all reasonable facilities for traffic whilst the order is in force.

**4.**—(1) Whenever an Order in Council is made under this Act a commission (in this Act called the Military Manœuvres Commission) shall be formed consisting of as representative members Military Manœuvres Commission.  
(a) and (b) :

(a) two persons appointed by the council of each county and one person appointed by the council of each county borough (if any) wholly or partly within the specified limits ; and

(b) if those limits include any part of the New Forest, two persons appointed by the court of verderers ; and

(c) such other persons, being resident owners or occupiers of land within those limits, as may be appointed by the Secretary of State. Provided always that the persons appointed under the foregoing provisions of this section exceed in number the persons appointed by the Secretary of State.

(2) The commission may act by three of their number, and notwithstanding any vacancy in their number.

(3) Any question arising at any meeting of the commission shall be decided by the majority of those voting on the question, and if the votes are equal the chairman of the meeting shall have a second or casting vote.

The orders are of a temporary nature, and necessarily so the commission.

**Sect. 5.**

Power of  
commission  
to make  
orders and  
regulations.

**5.**—(1) The Military Manœuvres Commission may make orders for determining what lands, roads, and sources of water are to be authorised lands, roads, and sources within the meaning of this Act.

(2) Before any such order is made, a draft thereof shall be sent to the district council for each district wholly or partly within the specified limits, and be deposited by them for public inspection during at least two weeks at their office or some other suitable place fixed by them, and notice of the deposit, stating the mode of objecting to the order, shall be advertised for two successive weeks in at least two newspapers circulating generally within those limits.

(3) The commission shall hold at least one public meeting to hear any objections to the draft order, and shall consider all objections made, and shall, if necessary, revise the draft order with reference thereto, and within a week of such meeting serve the revised draft on such district council.

(4) The commission may also make regulations with respect to—

- (a) the protection and maintenance of animals by securing them in folds or farmyards, or otherwise, and
- (b) any matter which the commission may deem important for preventing damage to property and for carrying into effect the purposes of this Act.

(5) Any person who, without reasonable cause, fails to comply with any such regulation shall not be entitled to compensation for any damage caused to his property by reason of his default.

(6) All orders and regulations made by the commission shall be published in such manner as may appear to the commission most suitable for giving notice thereof to the persons affected thereby.

Compensa-  
tion for  
damage.

**6.**—(1) Where an Order in Council authorises the execution of military manœuvres, full compensation shall be made out of money to be provided by Parliament for any damage to person or property or interference with rights or privileges, arising from putting in force any of the provisions of this Act, and whether or not occasioned by the acts or defaults of the authorised forces, including therein all expenses reasonably incurred in protecting person, property, rights, and privileges, and any damage by reason of excessive weight or extraordinary traffic caused to any highway for the repair of which any public body or any individual is responsible.

(2) The Military Manœuvres Commission shall, with the con-

currence of the Treasury, appoint a compensation officer or compensation officers to determine as speedily as possible any claim for compensation under this Act, and settle the amount payable.

**Sect. 6.**

(3) The commission may make regulations with respect to the procedure for making and determining claims for compensation, for limiting the time within which claims must be made, and for regulating the mode in which compensation is to be paid.

(4) If the amount of compensation is not settled by agreement between the compensation officer and the claimant, the difference between them shall be referred to arbitration, and for this purpose the service in manner directed by the regulations of a notice of claim for compensation shall be treated as a submission to arbitration within the meaning of the Arbitration Act, 1889 (a), and that Act shall apply accordingly.

52 & 53 Vict  
c. 44

(a) *Ante*, p. 513.

**7.**—(1) If, within the limits and during the period specified in an order authorising military manœuvres under this Act, any person—

Offences.

(a) wilfully and unlawfully obstructs or interferes with the execution of the manœuvres ; or

(b) without due authority enters or remains in any camp, he shall be liable on summary conviction to a fine not exceeding forty shillings, and he and any animal or vehicle under his charge may be removed by any constable, or by, or by order of, any commissioned officer of the authorised forces.

(2) If within the limits and during the period aforesaid any person—

(a) without due authority moves any flag or other mark distinguishing, for the purposes of the manœuvres, any lands ;  
or

(b) maliciously cuts or damages any telegraph wire laid down by or for the use of the authorised forces, he shall be liable on summary conviction to a fine not exceeding five pounds.

Sections 8 and 9 apply the Act to Scotland and Ireland.

\* \* \* \* \*

**10.** This Act may be cited as the Military Manœuvres Act, Short title. 1897.

## THE COMMONS ACT, 1899.

(62 & 63 VICT. c. 30.)

*An Act to amend the Inclosure Acts, 1845 to 1882, and the Law relating to commons and open spaces.* [9th August 1899.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

### PART I.

#### REGULATION OF COMMONS.

Power for district council to make scheme for regulation of common.

1.—(1) The council of an urban or rural district may make a scheme for the regulation and management of any common within their district with a view to the expenditure of money on the drainage, levelling, and improvement of the common, and to the making of byelaws and regulations for the prevention of nuisances and the preservation of order on the common.

39 & 40 Vict. c. 56.

(2) The scheme may contain any of the statutory provisions for the benefit of the neighbourhood mentioned in section seven of the Commons Act, 1876.

(3) The scheme shall be in the prescribed form, and shall identify by reference to a plan the common to be thereby regulated, and for this purpose an ordnance survey map shall, if possible, be used.

"Prescribed" means prescribed by regulations of the Board of Agriculture (see s. 15). This has been done by the Commons Regulations, dated May 1st, 1900.

Procedure for making scheme.

2.—(1) Not less than three months before the making of a scheme under this Part of this Act the council shall give the prescribed notice of their intention to make it, and shall state thereby where copies of the draft of the scheme may be obtained, and where the plan therein referred to may be inspected. They shall also send to the Board of Agriculture as soon as possible a copy of the draft and plan.

(2) During the three months aforesaid any person may obtain copies of the draft on payment of a sum not exceeding sixpence per copy, and may inspect the plan at the prescribed place, and may make in writing to the Board of Agriculture any objection or suggestion with respect to the scheme or plan. **Sect. 2.**

(3) After the expiration of the said three months the Board of Agriculture shall take into consideration any objections or suggestions so made, and for that purpose may, if they think fit, direct that an inquiry be held by an officer of the Board.

(4) The Board of Agriculture may by order approve of the scheme, subject to such modifications, if any, as they may think desirable, and thereupon the scheme shall have full effect.

Provided that if, at any time before the Board have approved of the scheme, they receive a written notice of dissent either—

(a) from the person entitled as lord of the manor or otherwise to the soil of the common ; or

(b) from persons representing at least one-third in value of such interests in the common as are affected by the scheme, and such notice is not subsequently withdrawn, the Board shall not proceed further in the matter.

In the prescribed form of scheme there is a saving of the rights in the soil and of the minerals.

3. The management of any common regulated by a scheme made by a district council under this Part of this Act shall be vested in the district council. **Management of regulated common.**

4. A rural district council may delegate to a parish council any powers of management conferred by this Part of this Act on the district council in relation to any commons within the parish, and thereupon the Public Health Acts shall apply as if the parish council were a parochial committee. **Provision for delegation of powers of district council to parish council.**

5. A parish council may agree to contribute the whole or any portion of the expenses of and incidental to the preparation and execution of a scheme for the regulation and management of any common within their parish (including any compensation paid under this Act), and the provisions of section eleven of the Local Government Act, 1894, shall apply to the expenses incurred by the parish council for the purposes of such contribution. **Power for parish council to contribute to expenses.** 56 & 57 Vict. c. 73.

6. No estate, interest, or right of a profitable or beneficial nature in, over, or affecting any common shall, except with the consent of the person entitled thereto, be taken away or injuriously **Provision for compensation.**

**Sect. 6.**

affected by any scheme under this Part of this Act without compensation being made or provided for the same by the council making the scheme, and such compensation shall, in case of difference, be ascertained and provided in the same manner as if it were for the compulsory purchase and taking, or the injurious affecting, of lands under the Lands Clauses Acts.

There is a similar provision to this in the Metropolitan Commons Act, 1866, set out in Appendix, *post*, and see notes thereto.

Power for district council to acquire property in regulated common.

7. A district council may acquire the fee simple or any estate in or any rights in or over any common regulated by a scheme under this Part of this Act by gift or by purchase by agreement, and hold the same without licence in mortmain for the purposes of the scheme, and the expenses thereby incurred by the district council shall be part of their expenses of executing the scheme.

Digging of gravel. 39 & 40 Vict. c. 56.

8. Section twenty of the Commons Act, 1876 (which relates to the digging of gravel), shall apply to any common regulated by a scheme under this Part of this Act.

Power to amend scheme.

9. The power to make a scheme under this Part of this Act shall include power to amend or supplement any such scheme.

Section 10 relates to byelaws ; sections 11, 12 relate to expenses.

Application to county boroughs.

13. This Part of this Act shall apply to the council of a county borough in like manner as if that council were the council of an urban district.

Saving for commons regulated under other Acts.

14. A scheme under this Part of this Act shall not apply to any common which is or might be the subject of a scheme made under the Metropolitan Commons Acts, 1866 to 1878, or is regulated by a provisional order under the Inclosure Acts, 1845 to 1882, or has been acquired, or managed as an open space, under the powers of the Corporation of London (Open Spaces) Act, 1878, or any Act therein referred to, or is the subject of any private or local and personal Act of Parliament having for its object the preservation of the common as an open space, or is subject to byelaws made by a parish council under section eight of the Local Government Act, 1894.

41 & 42 Vict. c. cxxvii.

Definitions.

15. In this Part of this Act, unless the context otherwise requires,—

The expression “common” shall include any land subject to be

inclosed under the Inclosure Acts, 1845 to 1882, and any town or village green ; Sect. 15.

The expression "prescribed" shall mean prescribed by regulations made by the Board of Agriculture.

\* \* \* \* \*

**22.**—(1) A grant or inclosure of common purporting to be made under the general authority of any of the Acts mentioned in the First Schedule hereto or any Act incorporating the same, or any provisions thereof, shall not be valid unless it is either— Restrictions on inclosures under scheduled Acts.

- (a) specially authorised by Act of Parliament ; or
- (b) made to or by any Government Department ; or
- (c) made with the consent of the Board of Agriculture.

(2) The Board of Agriculture, in giving or withholding their consent under this section, shall have regard to the same considerations, and shall, if necessary, hold the same inquiries as are directed by the Commons Act, 1876, to be taken into consideration and held by the Board before forming an opinion whether an application under the Inclosure Acts shall be acceded to or not. 39 & 40 Vict. c. 56.

It will be seen that among the Acts mentioned in the First Schedule is the Lands Clauses Consolidation Act, 1845. The effect of this section is to prevent bodies, having powers to purchase land by agreement under that Act, from acquiring or inclosing a common without a provisional order or the consent of the Board of Agriculture.

\* \* \* \* \*

**24.** This Act may be cited as the Commons Act, 1899, and shall read with the Inclosure Acts, 1845 to 1882.

## FIRST SCHEDULE.

ENACTMENTS relating to INCLOSURES subject to restriction under the Act.

Session and Chapter.	Title or Short Title.
43 Eliz. c. 2	The Poor Relief Act, 1601.
17 Geo. 3, c. 53	The Clergy Residences Repair Act, 1776.
51 Geo. 3, c. 115	The Gifts for Churches Act, 1811.
58 Geo. 3, c. 45	The Church Building Act, 1818.
1 & 2 Will. 4, c. 42	The Poor Relief Act, 1831.
1 & 2 Will. 4, c. 59	The Crown Lands Allotments Act, 1831.
5 & 6 Will. 4, c. 69	The Union and Parish Property Act, 1835.
4 & 5 Vict. c. 38	The Schools Sites Act, 1841.
8 & 9 Vict. c. 18	The Lands Clauses Consolidation Act, 1845.
17 & 18 Vict. c. 112	The Literary and Scientific Institutions Act, 1854.

## THE MILITARY LANDS ACT, 1900.

(63 & 64 VICT. c. 56.)

*An Act to amend the Military Lands Act, 1892.*

[8th August 1900.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

County or borough council may lease land and volunteer corps may borrow on security of lease.

1.—(1) The council of a county or borough holding land on behalf of one or more volunteer corps under sub-section three of section one of the Military Lands Act, 1892 (*a*), may lease the land or any part thereof to any such corps for military purposes for a period not exceeding ninety-nine years.

(2) The powers of a volunteer corps to borrow and of the Public Works Loan Commissioners to lend under the Military Lands Acts, 1892 and 1897, shall extend to borrowing and lending on the security of any such lease.

(3) If the volunteer corps is disbanded or the land ceases to be used for military purposes, the lease shall vest in the Secretary of State, subject to repayment of any money borrowed on the security of the lease and not already repaid.

(*a*) *Ante*, p. 580. These councils have also power to lease under s. 3 of that Act.

Provision as to byelaws.

2.—(1) Where any land is for the time being appropriated by the Admiralty for any purpose of her Majesty's navy, or used by the Admiralty for any such purpose, the Admiralty shall have the same power of making byelaws with respect to the land as may be exercised by a Secretary of State with respect to land appropriated or used for a military purpose, as the case may be, and the provisions of the Military Lands Act, 1892, relating to byelaws shall apply accordingly (*a*).

55 & 56 Vict. c. 43.

(2) Where any land, the use of which can be regulated by byelaws under the Military Lands Act, 1892, or this Act, abuts on any sea or tidal water, or where rifle or artillery practice is or can be carried on over any sea, tidal water, or shore, from any

such land, byelaws may be made in relation to any such sea, tidal water, or shore, as if they were part of the land. Sect. 2

Provided that—

- (a) If any such byelaw injuriously affects or obstructs the exercise of any private right of any person in or over any such sea, tidal water, or shore, that person shall be entitled to compensation, and the compensation shall, in case of difference, be ascertained in manner provided by the Lands Clauses Acts with respect to the compensation for land taken otherwise than by agreement ; and
- (b) Any such byelaw shall not injuriously affect any public right within the meaning of this section unless made with the consent of the Board of Trade, but the Board of Trade, if satisfied after such inquiries and such notice and opportunity for objections as herein-after mentioned that a restriction of any public right is required for the safety of the public, or for the exigencies of the military or naval purpose for which the area to which the byelaws apply is used, may consent to a byelaw restricting the public right to such extent as under all the circumstances of the case seems reasonable ; and
- (c) No such byelaw shall be made in relation to any sea, tidal water, or shore which may for the time being be vested in her Majesty, and under the management of the Commissioners of Woods, without the consent in writing of such Commissioners on behalf of her Majesty first had and obtained for that purpose, which consent such Commissioners are hereby authorised to give.

(3) The Board of Trade, before consenting to any byelaw under this section, shall cause notice of the byelaw to be given by advertisement or otherwise in the locality, in order that any such town, harbour, and other local authorities and persons as are interested may have an opportunity for making objections to the byelaw, and shall consider any objections made, and shall make such inquiries as appear to the Board necessary for the purpose of ascertaining that the byelaw will not unreasonably interfere with any public right.

(4) For the purposes of this section “public right” means any right of navigation, anchoring, grounding, fishing, bathing, walking, or recreation.

(5) Where an area to which byelaws under this section apply consists of any sea or tidal water, or the shore thereof, and the boundaries of the area cannot, in the opinion of the authority

**Sect. 2**

making the byelaws, be conveniently marked by permanent marks, those boundaries shall be described in the byelaws, and shall be deemed to be sufficiently marked within the meaning of section seventeen of the Military Lands Act, 1892, if, while the area is in use for military or naval purposes, sufficient means are taken to warn the public from entering the area.

48 & 49 Vict.  
c. 36.

(6) Section three of the Artillery and Rifle Ranges Act, 1885, is hereby repealed (b).

(a) Sections 14—18, *ante*, p. 585. As to the application of these Acts to naval purposes, see the Naval Works Act, 1895, *ante*, p. 609.

(b) That section enabled byelaws to be made in certain cases and granted compensation. It is rendered unnecessary by the wider powers contained in this section.

Extension  
of meaning  
of "land."

3. Section twenty-three of the Military Lands Act, 1892 (a), shall have effect as if the definition of "land" in that section included the bed of the sea or any tidal water, and also any right of interference with the free use of any land, and the Military Lands Act, 1892, as extended by the Naval Works Act, 1895 (b), and as amended by this Act, shall be construed accordingly.

58 & 59 Vict.  
c. 35.

(a) *Ante*, p. 589.

(b) *Ante*, p. 609.

Amendment  
of 55 &  
56 Vict. c. 43,  
s. 2, as to  
limit of  
time for  
compulsory  
purchase.

4. Notwithstanding anything in section two of the Military Lands Act, 1892, the period of three years mentioned in section one hundred and twenty-three of the Lands Clauses Consolidation Act, 1845, shall be calculated from the passing of the Act confirming any Provisional Order under the Military Lands Act, 1892, and not from the passing of the Military Lands Act, 1892.

This section was required to correct an omission in the Act of 1892, as to which see note to s. 2 thereof, *ante*, p. 583.

Application  
to Scotland.

5. In the application of this Act to Scotland the following provision shall have effect :

In sub-section (9) of section twenty-five of the Military Lands Act, 1892, "twenty-one" shall be substituted for "twenty-two."

Short title  
and con-  
struction.

6. This Act shall be construed as part of the Military Lands Act, 1892, and may be cited as the Military Lands Act, 1900, and the Military Lands Act, 1892, the Military Lands Act, 1897, and this Act, may be cited collectively as the Military Lands Acts, 1892 to 1900.

## THE HOUSING OF THE WORKING CLASSES ACT, 1900.

(63 & 64 VICT. c. 59.)

*An Act to amend Part III. of the Housing of the Working  
Classes Act, 1890.* [8th August 1900.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Where any council, other than a rural district council, have adopted Part Three of the Housing of the Working Classes Act, 1890 (*a*) (in this Act referred to as "the principal Act"), they may, for supplying the needs of their district, establish or acquire lodging-houses for the working classes under that Part outside their district.

Exercise of  
powers out-  
side district.

(*a*) *Ante*, p. 557. This section would appear to enable local authorities to acquire land compulsorily outside their district, subject to obtaining a provisional order.

2.--(1) The council of any rural district may, with the consent of the county council, adopt Part Three of the principal Act, either for the whole of their district or for any contributory place or places therein.

Adoption of  
Part III.  
of Act by  
rural district  
council.  
53 & 54 Vict.  
c. 70.

(2) In giving or withholding their consent under this section, the county council shall have regard—

- (a) to the area for which it is proposed to adopt the said Part ; and
- (b) to the necessity for accommodation for the housing of the working classes in that area ; and
- (c) to the probability of such accommodation being provided without the adoption of the said Part ; and
- (d) to the liability which will be incurred by the rates, and to the question whether it is, under all the circumstances, prudent for the district council to adopt the said Part.

**Sect. 2.**53 & 54 Vict.  
c. 70.

(3) The principal Act is hereby repealed to the extent mentioned in the third column of the schedule to this Act.

This section takes the place of s. 55, which it repeals. Parts of ss. 54 and 65 are also repealed as incidental to the repeal of s. 55.

Sections 3, 4, and 5.—Section 3 deals with expenses of the metropolitan boroughs, s. 4 with accounts, and s. 5 with leasing of land for the purpose of building lodging-houses.

°                    °                    °                    °                    °

Powers of  
county  
council  
to act on  
default of  
rural council.

56 & 57 Vict.  
c. 73.

6. The council of any administrative county, if a parish council, shall resolve that a rural district council ought to have taken steps for the adoption of Part III. of the principal Act, or to have exercised their powers under that Part, and have failed to do so, may, if satisfied after due inquiry that the district council have so failed, resolve that the powers of the district council for the purposes of that Part shall be transferred to the county council with respect to the parish, and they shall be transferred accordingly, and the resolution shall, if necessary, have effect as an adoption of that Part by the district council, and, subject to the provisions of this Act, section sixty-three of the Local Government Act, 1894, shall apply as if the powers had been transferred under that Act.

Arbitration  
as to acquisition  
of land.

7. Where land is acquired under Part III. of the principal Act otherwise than by agreement, any question as to the amount of compensation which may arise shall in default of agreement be determined by a single arbitrator to be appointed and removable by the Local Government Board, and sub-sections (5), (7), (8), (10), and (11) of section forty-one of the Act shall apply as in the case of an arbitration under that section. Provided that in the case of a council in London a Secretary of State shall be substituted for the Local Government Board.

The compensation was previously determined under the Lands Clauses Acts, by virtue of s. 57 of the Act of 1890. These Acts will still be applicable, except as modified by this section. For s. 41, see *ante*, p. 554.

Short title  
and extent.

8.—(1) This Act may be cited as the Housing of the Working Classes Act, 1900, and the Housing of the Working Classes Acts, 1890 to 1894, and this Act may be cited together as the Housing of the Working Classes Acts, 1890 to 1900 (*a*).

(2) This Act shall not extend to Scotland or Ireland.

(*a*) To these must now be added the Housing of the Working Classes Act, 1903, *post*, p. 636.

THE RAILWAYS (ELECTRICAL POWER)  
ACT, 1903.

(3 EDW. 7, c. 30.)

*An Act to facilitate the introduction and use of Electrical Power  
on Railways.* [14th August 1903.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1.—(1) With the object of facilitating the introduction and use of electrical power on railways the Board of Trade may, upon the application of a railway company, make orders for all or any of the following purposes, namely :

Introduction  
of electrical  
power under  
orders of  
Board of  
Trade.

- (a) authorising a railway company to use electricity in addition to or in substitution for any other motive power, and for any other purpose ;
- (b) authorising the company to construct and maintain generating stations or other electrical works on any land belonging to the company ;
- (c) authorising agreements between the company and any body corporate or other person for the supply to the company of electrical power or the supply to or use by the company of any electrical plant or equipment ;
- (d) sanctioning any modification of any working agreement so far as the modification is agreed to between the parties thereto, and is consequential on the introduction or use of electrical power ;
- (e) authorising the company to subscribe to any electrical undertaking which will facilitate the supply of electricity to the company ;
- (f) securing the safety of the public ;
- (g) authorising the issue of new capital by the company for any of the purposes of this Act ;

**Sect. 1.**

(h) any other matters, whether similar to the above or not, which may be considered ancillary to the objects of the order, or expedient for carrying those objects into effect.

(2) An order made by the Board of Trade under this Act shall, on coming into operation, have effect as if enacted by Parliament.

**Acquisition  
of land for  
electrical  
works.**

**2.**—(1) An order under this Act may contain provisions authorising the acquisition of land by any railway company for the purpose of constructing generating stations or other electrical works, but if power is given by order to acquire the land otherwise than by agreement, the order shall not come into operation, so far as it gives that power, unless confirmed by Parliament, and the Board of Trade may bring in a Bill for confirming the order.

(2) If while a Bill confirming any such order is pending in either House of Parliament a petition is presented against the order, the Bill, so far as it relates to the order, may be referred to a select committee, or, if the two Houses of Parliament think fit so to order, to a joint committee of those Houses, and the petitioner shall be allowed to appear and oppose as in the case of private Bills.

It will be observed that there is no provision to the effect that the Lands Clauses Acts are to be incorporated with the order when land is to be acquired, whether by agreement or compulsorily. See, however, s. 1 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 1.

**Board of  
Trade  
inquiries.**

**3.**—(1) Before making an order under this Act the Board of Trade shall be satisfied that the public notice required by rules made under this Act of the application for the order has been given, and shall consider any objections made by the council of any county, any local authority, or other person to the application in accordance with those rules, and give to those by whom the objection is made an opportunity of being heard, and if after consideration the Board decide that the objection should be upheld, the Board shall not make the order or shall modify the order so as to remove the objection.

(2) The Board of Trade may, if they think fit, hold a local inquiry for the purpose of considering any application for an order under this Act, and the Board of Trade Arbitrations, etc. Act, 1874 (*a*), shall apply to any inquiry so held as if—

(a) the inquiry was held on an application made in pursuance of the special Act ; and

- (b) the parties making the application for the order and any person objecting to any such application were parties to the application within the meaning of section three of that Act. Sect. 3.

(a) 37 & 38 Vict. c. 40. Section 3 thereof makes provision for the payment of the expenses of the Board in regard to such inquiries, and the Board of Trade may require the parties to the application or some of them to pay such costs.

**4.**—(1) The Board of Trade may (with the concurrence of the Treasury as to number and remuneration) appoint or employ such persons as appear to them to be required for carrying this Act into effect, and the remuneration of such persons, and any other expenses of the Board of Trade under this Act, shall be defrayed out of moneys provided by Parliament. Expenses and fees.

(2) There shall be charged in respect of proceedings under this Act before the Board of Trade such fees as may be fixed by the Treasury on the recommendation of the Board of Trade.

**5.** The Board of Trade may make such rules as they think necessary for regulating the notices and advertisements to be given of any application for an order under this Act or otherwise for the purposes of this Act, and any other matter which they think expedient to regulate by rule for the purpose of carrying this Act into effect. Power to Board of Trade to make rules.

**6.**—(1) In this Act the expression "railway company" includes a company or person working a railway under lease or otherwise. Interpretation, saving, short title, and commencement.

(2) Nothing in this Act shall affect any powers which a railway company may have independently of this Act.

(3) This Act may be cited as the Railways (Electrical Power) Act, 1903.

(4) This Act shall come into operation on the first day of January nineteen hundred and four.

## THE HOUSING OF THE WORKING CLASSES ACT, 1903.

(3 EDW. 7, c. 39.)

*An Act to amend the Law relating to the Housing of the Working  
Classes.* [14th August 1903.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

### GENERAL AMENDMENTS OF LAW.

Section 1 extends the maximum term for repayment of loans to eighty years.

Transfer of  
powers and  
duties of  
Home Office  
to Local  
Government  
Board.

2.—(1) His Majesty may by Order in Council assign to the Local Government Board any powers and duties of the Secretary of State under the Housing Acts, or under any scheme made in pursuance of those Acts, and the powers of the Secretary of State under any local Act, so far as they relate to the housing of the working classes, and any such powers and duties so assigned shall become powers and duties of the Local Government Board.

52 & 53 Vict.  
c. 30.

(2) Section eleven of the Board of Agriculture Act, 1889, shall apply with respect to the powers and duties transferred under this section as it applies with respect to the powers and duties transferred under that Act, with the substitution of the Local Government Board for the Board of Agriculture and of the date of the transfer under this section for the date of the establishment of the Board of Agriculture.

The Home Secretary is at present the confirming authority for London ; see s. 8 (1) (2) of the Housing of the Working Classes Act, 1890, *ante*, p. 536, and see also s. 16 of this Act, *infra*.

Re-housing  
obligations  
when land is  
taken under  
statutory  
powers.

3. Where under the powers given after the date of the passing of the Act by any local Act or provisional order, or order having the effect of an Act, any land is acquired, whether compulsorily or

by agreement, by any authority, company, or person, or where after the date of the passing of this Act any land is so acquired compulsorily under any general Act (other than the Housing Acts), the provisions set out in the schedule to this Act shall apply with respect to the provision of dwelling accommodation for persons of the working class.

Sect. 3.

In local Acts special provisions have been inserted by Parliament requiring the promoters to re-house a certain number of the working classes displaced. This section and the schedule will in the future take the place of these provisions, and will apply in all cases where land is to be acquired under a local or general Act or provisional order, and whether by agreement or otherwise, if by reason of such acquisition thirty or more persons belonging to the working classes are to be displaced in any of the districts mentioned in paragraph 1 of the schedule. In London the schedule will be administered for the present by the Home Office. See s. 16, *post*.

## AMENDMENTS AS TO SCHEMES.

Section 4 contains powers enabling the confirming authority to act if the local authority fail to make a scheme when required.

5.—(1) Section seven of the principal Act shall have effect as if the words “in the month of September or October or November” were omitted from paragraph (a), and as if the words “during the thirty days next following the date of the last publication of the advertisement” were substituted for the words “during the month next following the month in which such advertisement is published” in paragraph (b). Amendment of procedure for confirming improvement scheme.

(2) The order of a confirming authority under sub-section four of section eight of the principal Act shall, notwithstanding anything in that section, take effect without confirmation by Parliament—

(a) if land is not proposed to be taken compulsorily ; or

(b) if, although land is proposed to be taken compulsorily, the confirming authority before making the order are satisfied that notice of the draft order has been served as required as respects a provisional order by sub-section five of the said section eight, and also that the draft order has been published in the London Gazette, and that a petition against the draft order has not been presented to the confirming authority by any owner of land proposed to be taken compulsorily within two months after the date of the publication and the service of notice, or, having been so presented, has been withdrawn.

**Sect. 5.**

(3) For the purposes of the principal Act, the making of an order by a confirming authority, which takes effect under this section without confirmation by Parliament, shall have the same effect as the confirmation of the order by Act of Parliament, and any reference to a provisional order, made under section eight of the principal Act, shall include a reference to an order which so takes effect without confirmation by Parliament.

For ss. 7 and 8 of the principal Act, see *ante*, p. 534. The effect of this amendment will be to make the procedure under Parts I. and II. similar as regards the confirming Act. *Cf.* s. 39 of the principal Act, *ante*, p. 551, and the next section.

Power to  
modify  
schemes in  
certain cases.

**6.**—(1) If an order under sub-section four of section eight (a) or under section thirty-nine of the principal Act (b), which, if no petition were presented, would take effect without confirmation by Parliament, is petitioned against, the confirming authority or the Local Government Board, as the case may be, may, if they think fit, on the application of the local authority, make any modifications in the scheme to which the order relates for the purpose of meeting the objections of the petitioner and withdraw the order sanctioning the original scheme, substituting for it an order sanctioning the modified scheme.

(2) The same procedure shall be followed as to the publication and giving notices, and the same provisions shall apply as to the presentation of petitions and the effect of the order, in the case of the order sanctioning the modified scheme, as in the case of the order sanctioning the original scheme, but no petition shall be received or have any effect except one which was presented against the original order, or one which is concerned solely with the modifications made in the scheme as sanctioned by the new order.

(a) *Ante*, p. 536.

(b) *Ante*, p. 551.

Amendments  
as to scheme  
of recon-  
struction.

**7.** Where a scheme for reconstruction under Part II. of the principal Act is made, neighbouring lands may be included in the area comprised in the scheme if the local authority under whose direction the scheme is made are of opinion that that inclusion is necessary for making their scheme efficient, but the provision of sub-section two of section forty-one, as to the exclusion of any additional allowance in respect of compulsory purchase, shall not apply in the case of any land so included.

Previously neighbouring lands could not be included in a scheme under Part II. The provisions in sub-s. (3) of s. 41 (*ante*, p. 554) will apparently apply to such neighbouring land.

## AMENDMENTS AS TO CLOSING ORDERS, DEMOLITION, ETC.

## Sect. 10.

Section 8 amends s. 32 of the principal Act as to the procedure to obtain a closing order, and s. 9 deals with the cost of taking down a building under s. 34 of the principal Act.

10. Where default is made as respects any dwelling-house in obeying a closing order in the manner provided by sub-section three of section thirty-two of the principal Act (*a*), possession of the house may be obtained (without prejudice to the enforcement of any penalty under that provision), whatever may be the value or rent of the house, by or on behalf of the owner or local authority, either under sections one hundred and thirty-eight to one hundred and forty-five of the County Courts Act, 1888 (*b*), or under the Small Tenements Recovery Act, 1838 (*c*), as in the cases therein provided for, and in either case may be obtained as if the owner or local authority were the landlord.

Recovery of possession from occupying tenants in pursuance of closing orders.

Any expenses incurred by a local authority under this section may be recovered from the owner of the dwelling-house as a civil debt in manner provided by the Summary Jurisdiction Acts.

(*a*) *Ante*, p. 547.

(*b*) 51 & 52 Vict. c. 43.

(*c*) 1 & 2 Vict. c. 74.

## MISCELLANEOUS.

11.—(1) Any power of the local authority under the Housing Acts, or under any scheme made in pursuance of any of those Acts, to provide dwelling accommodation or lodging-houses, shall include a power to provide and maintain, with the consent of the Local Government Board, and, if desired, jointly with any other person, in connection with any such dwelling accommodation or lodging-houses, any building adapted for use as a shop, any recreation grounds, or other buildings or land which in the opinion of the Local Government Board will serve a beneficial purpose in connection with the requirements of the persons for whom the dwelling accommodation or lodging-houses are provided, and to raise money for the purpose, if necessary, by borrowing.

Powers in connection with provision of dwelling accommodation or lodging-houses.

(2) The Local Government Board may, in giving their consent to the provision of any land or building under this section, by order apply, with any necessary modifications, to such land or building any statutory provisions which would have been applicable thereto if the land or building had been provided under any enactment giving any local authority powers for the purpose.

As to power to provide lodging-houses and to acquire land for the purpose, see s. 57 of the principal Act, *ante*, p. 558, and the Housing of the Working Classes Act, 1900, *ante*, p. 631.

Section 12 amends s. 75 of the principal Act.

**Sched.**

(7) Before approving any scheme the Local Government Board may if they think fit require the undertakers to give such security as the Board consider proper for carrying the scheme into effect.

(8) The Local Government Board may hold such inquiries as they think fit for the purpose of their duties under this schedule, and sub-sections one and five of section eighty-seven of the Local Government Act, 1888 (which relate to local inquiries), shall apply for the purpose, and where the undertakers are not a local authority shall be applicable as if they were such an authority.

(9) If the undertakers enter on any working-men's dwelling in contravention of the provisions of this schedule, or of any conditions of approval of the housing scheme made by the Local Government Board, they shall be liable to a penalty not exceeding five hundred pounds in respect of every such dwelling :

Any such penalty shall be recoverable by the Local Government Board by action in the High Court, and shall be carried to and form part of the Consolidated Fund.

(10) If the undertakers fail to carry out any provision of the housing scheme, the Local Government Board may make such order as they think necessary or proper for the purpose of compelling them to carry out that provision, and any such order may be enforced by mandamus.

(11) The Local Government Board may, on the application of the undertakers, modify any housing scheme which has been approved by them under this schedule, and any modifications so made shall take effect as part of the scheme.

(12) For the purposes of this schedule—

- (a) The expression "undertakers" means any authority, company, or person who are acquiring land compulsorily or by agreement under any local Act or provisional order or order having the effect of an Act, or are acquiring land compulsorily under any general Act :
- (b) The expression "enabling Act" means any Act of Parliament or order under which the land is acquired :
- (c) The expression "local authority" means the council of any administrative county and the district council of any county district, or, in London, the council of any metropolitan borough, in which in any case any houses in respect of which the re-housing scheme is made are situated, or in the case of the city the common council :
- (d) The expression "dwelling" or "house" means any house or part of a house occupied as a separate dwelling :
- (e) The expression "working class" includes mechanics, artisans, labourers, and others working for wages ; hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others, except members of their own family, and persons other than domestic servants whose income in any case does not exceed an average of thirty shillings a week, and the families of any of such persons who may be residing with them.

# APPENDIX.

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## BETTERMENT.

THAT persons whose property has been increased in value by an improvement effected by local authorities should specially contribute to the cost of the improvement has commended itself to many persons as a fair and reasonable principle. John Stuart Mill, in speaking of the "equality of taxation" (one of the fundamental principles of taxation enforced by Adam Smith), said: "There are cases in which exceptions may be made to it consistently with that equal justice which is the groundwork of the rule. Suppose that there is a kind of income which constantly tends to increase without any exertion or sacrifice on the part of the owners: the owners constitute a class in the community, whom the natural course of things progressively enriches, consistently with complete passiveness on their own part. In such a case it would be no violation of the principles on which private property is grounded if the State should appropriate the increase of wealth, or part of it as it arises. Now this," he adds, "is actually the case with rent. The ordinary progress of a society which increases in wealth is at all times tending to augment the incomes of landlords, to give them both a greater proportion of the wealth of the community independently of any trouble or outlay incurred by themselves." This "augmentment," he called the "unearned increment" and proposed to tax. "Betterment" as a principle is only a proposal to tax the increment when it clearly and directly arises from an improvement carried out by a public authority and at the public expense. The principle has been acted upon in America, and the London County Council sought to apply it to more than one of the improvement schemes which it proposed to carry out. Some of these applications, although they commended themselves to committees of the House of Commons, were rejected by committees of the House of Lords. The proposals were not the same in all respects as those which were embodied in two Improvement Bills passed in 1894, and although they did not pass into law they ultimately led the House of Lords to appoint a select committee to consider and report whether in the case of improvements sanctioned by Parliament and effected by the expenditure of public funds, persons, the value of whose property is clearly increased by an improvement, can be equitably required to contribute to the costs of the improvements, and, if so, in what cases and under what conditions Parliament should sanction the levying of such contributions in local Acts or provisional orders.

**Appendix.** The committee took evidence, and ultimately reported as follows :

**TOWNS IMPROVEMENTS (BETTERMENT).**

*Report by the select committee appointed to consider and report whether, in the case of improvements sanctioned by Parliament and effected by the expenditure of public funds, persons, the value of whose property is clearly increased by an improvement, can be equitably required to contribute to the costs of the improvements, and, if so, in what cases and under what conditions Parliament should sanction the levying of such contributions in local Acts or provisional orders.*

*Ordered to report.*

That the committee have met and considered the subject referred to them, and have agreed to the following report :

1. The committee have taken evidence from the promoters of several Bills which have contained provisions for imposing what has been called a betterment charge in respect of improvements effected by local authorities.

2. They have also had before them witnesses who have had experience of the actual working of betterment charges in various forms, and they have taken the evidence of other experienced witnesses and of gentlemen who have written upon the subject.

3. They made known their willingness to hear any evidence that any municipal body or local authority might be disposed to lay before them. The committee, having fully considered the evidence taken before them, have come to the following conclusions, viz. :

Principle.

(1) The principle of betterment—in other words, the principle that persons whose property has clearly been increased in market value by an improvement effected by local authorities should specially contribute to the cost of the improvement—is not in itself unjust, and such persons can equitably be required to do so. But the effect of a public work in raising the value of neighbouring lands is shown by experience to be uncertain. Whether, in any particular case, it is possible for a valuer to pronounce that such an effect has been produced by the completion of any public work, is a point upon which the evidence of eminent valuers differs greatly.

Notice.

(2) The Standing Orders should be amended so that in any case where a private Bill renders any property liable to a special charge on the ground that its market value will be increased by the completion of a public work, the owners of such property, or of any interest therein, shall be entitled to notice before the introduction of the Bill, in like manner as if the property were to be compulsorily purchased.

Notice of amount.

(3) It should be provided in the Bill that within some reasonable period after the completion of the work, the owner of the property intended to be charged should receive notice of the amount of the charge which the local authority proposes to make in respect of the alleged increase in the

market value of the property due to the work in question. **Appendix.**  
 Inasmuch as the appropriateness of the period must to some extent depend upon the nature of the work and the condition of the neighbourhood, it would be difficult to fix any definite time applicable to all cases, but these considerations should be borne in mind by the committee to which the Bill is referred. The period should not be so short that the effect of the improvement could not be adequately tested, and it should not be so long as to make the property intended to be charged suffer in its market value by the suspension of the decision as to the charge.

- (4) In default of acquiescence by the person on whom notice is served, the amount of the charge to be made should be decided by an arbitrator, unless the said person claims to go before a jury, and the decision should be taken with as little delay as possible. Decided by arbitrator.
- (5) All the costs of such arbitration or inquiry before a jury should be borne by the local authority claiming to lay such charge, unless the arbitrator or jury shall find or award the same sum or a greater sum than that which the local authority sought to lay upon the property, in which case each party shall bear his own costs incident to the arbitration or inquiry, and the costs of the arbitrator or jury shall be borne by each of the parties in equal proportions; unless it should be otherwise ordered by the arbitrators, or in the case of a jury by the High Court, upon the ground that the opposition to the proposed charge has been frivolous and vexatious. Costs.
- (6) If the owner has property in the immediate neighbourhood which is found to be injured in its market value by the same work, the amount of the injury should be considered in determining the charge to be imposed upon him for improvements. Worsenment.
- (7) If the owner is of opinion that the charge exceeds the enhancement of market value due to the public work, he should be entitled to claim that the local authority should purchase the property in question at the value which it bore, without regard to any improvement conferred or to be conferred upon it by such work; but under such circumstances a local authority purchasing a freehold or long leasehold should not be compellable to dispossess the occupying tenants, and should, if they prefer it, be empowered to purchase the reversion, subject to any intermediate interests. Owner may claim to sell at unimproved value.
- (8) If any question should arise as to the incidence of the betterment charge between any of the persons entitled to different interests in the same property charged, the question should be determined by arbitration.
- (9) Various witnesses have illustrated their opinions by reference to the Bills now before Parliament, but the committee (to which these Bills have not been referred) has formed no opinion on the merits of either of the Bills in question;

**Appendix.**

but inasmuch as the provision as to notices in paragraph (2) is inapplicable to the Bills already introduced, the committee consider that it ought to suffice if the select committee to which the Bills in question are to be referred should be satisfied that adequate notice has been given to all persons who may be affected by the proposed process of charging.

- Recoupment (10) The committee have received evidence upon what has been called "recoupment," that is to say, powers given to a municipal or other public body to take land beyond what is necessary for the actual execution of the work, so that some part at least of the improved value may be secured by the improving public body in case of the burden upon the ratepayers. Some evidence was given by persons who had actual experience of the operation of such a system, the general effect of which was that it had not proved successful; but the committee are not satisfied that it has ever been tried under circumstances calculated to make it successful, inasmuch as no sufficient power has ever yet been given to local authorities to become possessed of the improved properties without buying out all the trade interests, a course which is inevitably attended with wasteful and extravagant expenditure.

Before the committee issued their report, two Bills—the London County Council (Tower Bridge, Southern Approach) Bill and the Manchester Corporation Bill—which contained clauses giving effect to the principle of betterment, had passed the House of Commons. After the report of the Lords' Committee had been made public these Bills came before a committee of the House of Lords (presided over by Lord Cowper), and the clauses which had been introduced by the promoters with the object of giving effect to the recommendations of the committee on betterment were carefully considered. We have thought it well, as these clauses will probably be regarded in future as "model clauses," to give these in the form in which they left the committee of the House of Lords.

Clauses 6 and 22 (which follow) are taken from the Manchester Corporation Act, 1894, but the clauses in the London County Council (Tower Bridge, Southern Approach) Act, 1894, were, we believe, practically in the same form.

Power to  
make street  
improvements, etc.

6. Subject to the provisions of this Act the corporation may in the lines shown upon the deposited plans and according to the levels shown upon the deposited sections relating thereto respectively make and maintain the street improvements and other works hereinafter described and may in the lines shown on the deposited plans relating thereto make the new footpath in the township of Barton-upon-Irwell hereinafter described with all proper works and conveniences connected therewith respectively and may exercise the powers hereinafter mentioned (that is to say):

Firstly. They may widen on the east side thereof in the township and parish of Manchester in the county of Lancaster the street known as Half Street between Fennel Street and the street called Hanging Ditch so as to make the same of the width of ten yards;

Secondly. They may widen on the east side thereof so much of Victoria Street in the township and parish aforesaid as lies between Cathedral Yard and Cateaton Street; **Appendix.**

Thirdly. They may make a new road in the township of Hulme in the parish of Manchester in the county of Lancaster in continuation of the proposed road or street leading from the north-west end of Hulme Hall Road across the Bridgewater Canal to and under the Manchester South Junction and Altrincham Railway such new road commencing at the westerly side of the said railway and terminating at the westerly side of the railway of the Cheshire Lines Committee, and for the purpose thereof may alter the viaduct upon which the last-mentioned railway is constructed;

Fourthly. They may stop up and discontinue and extinguish all rights of way over so much of the public footpath in the township of Barton-upon-Irwell in the parish of Eccles in the county of Lancaster leading from Davyhulme to Barton which crosses the sewage outfall works of the corporation as lies between a point on such footpath four hundred and forty-seven yards or thereabouts northwards from its junction with Davyhulme Lane and the point where it joins Barton Road and in lieu thereof they may make a new footpath in the same township and parish between the points aforesaid.

22. And whereas the street improvements firstly and secondly described in and authorised by this Act including those referred to in or arising out of the scheduled agreements (in this section referred to as "the Improvement") will be effected out of public funds charged over the whole city and will or may substantially and permanently increase in value lands in the neighbourhood of the above-mentioned street improvements which will not be acquired for the purpose thereof and it is reasonable that provision should be made under which in respect or in consideration of such increased value a charge should be placed on such lands. Therefore the following provisions shall have effect provided that the same shall not be put into force unless the corporation by resolution of the council within two years after the passing of this Act determine so to do:

- (1) All lands within the limits marked on the deposited plans as **Lands** "limits of deviation and of land to be acquired" in charged. relation to the improvement but which shall not be purchased and taken by the corporation under the powers of this Act shall be liable to have an improvement charge placed on such lands or some of them (in accordance with the provisions hereinafter set forth) in respect or in consideration of any substantial and permanent increase in value which is clearly shown to be derived from the improvement;
- (2) At least two months before the corporation commence any part of the improvement they shall give notice by registered letter addressed to each owner, lessee, or occupier of any such lands within the limits of deviation and of land to be acquired shown on the deposited plans as the corporation include in such specification; thereupon any such owner, lessee, or occupier may apply to the Local Government

**Appendix.**

Board to appoint some independent person to make a valuation of the several lands within the limits of deviation and of land to be acquired which the corporation have included in the specification. A copy of the specification shall be delivered to the person so appointed within twenty-one days after his appointment and the person so appointed shall thereupon after giving such notice or notices as the Local Government Board may direct and hearing any parties interested and applying to be heard proceed to make a valuation of all such lands which valuation is hereafter referred to as the "initial valuation." The proper cost of making the initial valuation including the reasonable costs, charges, and expenses of all or any of the parties interested (to be fixed in case of difference by the Local Government Board) shall be paid by the corporation ;

Provided that if within one month after the service of the said notices no application be made for the appointment of a person to make the initial valuation, the corporation shall make such application and the valuation shall be made accordingly ;

In making such valuation the valuer shall separately distinguish and assess in each case the value of the land apart from that of any existing buildings thereon and shall also value the land and buildings as a whole, and shall not take into consideration any increased value accruing or supposed to accrue to such land or buildings from or in consequence of the improvement but shall only take into consideration the value independently of the improvement and as if the improvement had not been contemplated ;

The valuer shall also separately value the interest of the owner of any such lands and the interest of every lessee of any such lands for a term having not less than twenty-one years to run at the date of the valuation excluding from each such valuation any trade interest and shall not take into consideration any increased value accruing or supposed to accrue to such lands from or in consequence of the improvement but shall only take into consideration the value of the said lands independently of the improvement and as if the improvement had not been contemplated ;

The initial valuation when made shall be deposited with the town clerk and shall be kept deposited at his office and shall be open to inspection at all reasonable times by any persons and their duly authorised agents interested in any lands comprised in the said valuation ;

**Assessment.**

- (3) The corporation shall not sooner than twelve months nor later than three years after the issue by them of a certificate under seal of the completion of the improvement cause to be framed an assessment describing the lands situate within the said limits and comprised in the said valuation which the corporation allege ought to bear and

pay the said improvement charge and the corporation shall in such assessment state and specify **Appendix.**

- (a) The names of the owners lessees and occupiers of the lands described in the said assessment respectively so far as they can be ascertained ;
- (b) The amounts by way of charge which the corporation allege ought to be charged upon such lands respectively ;

The assessment shall contain a statement of the amount which the corporation allege is the enhanced market value derived by the lands respectively from the improvement ;

The amount to be proposed in the assessment as the charge to be placed on any lands under the provisions of this section shall be equal to three per centum per annum upon one-half of the amount which the corporation allege is the enhanced market value derived by the said lands from the improvement after making all fair and proper deductions for rates taxes assessments and impositions on the said lands according to such increased value ;

- (4) The assessment shall be submitted to and considered by the corporation at a meeting or meetings of the council and the corporation may by resolution approve the same either with or without modification or addition as they think fit ; Approval of assessment by corpora-  
tion.

- (5) The resolution approving an assessment shall be published once in each of two successive weeks in two or more Manchester daily newspapers with an interval of at least six clear days between the two publications and copies of such resolution shall be publicly posted on the site of the improvement to which it relates and within seven days of the date of the first publication of the resolution copies thereof shall also be served on the owners lessees and occupiers of the lands described in the assessment. Provided that in case the corporation are unable after diligent inquiry to ascertain the name or address of any owner or lessee on whom a copy is to be served it shall be sufficient to serve a copy of the resolution either by delivering the same to the occupier of the lands with a notice that the same is to be given to each immediate or superior landlord or owner or by affixing a copy of the resolution to some conspicuous and convenient place on or near the lands ; Notice of  
assessment.

The notices served on the owners lessees and occupiers under this section shall state shortly the effect of the resolution and assessment upon the lands in respect of which they are served and also of the provisions of this section with respect to the time and mode of objecting to the assessment and the grounds on which the assessment may be objected to the right to have the matter decided by a jury and the payment of costs ;

- (6) From and after the date of the first publication of the resolution and until the expiration of three months from the date of the last publication thereof the assessment or copies thereof certified by the town clerk or some other officer of the corporation shall be kept deposited at the town hall Copies to be  
deposited.

**Appendix.**

Objections to  
assessment.

- and shall be open to inspection at all reasonable times by any person interested ;
- (7) During the said period of three months any owner or lessee of any lands described in the assessment or the occupier thereof for the time being may by written notice served on the corporation object to the assessment on any of the grounds following :
- (i) That any lands in which he is interested included in the assessment ought to be excluded by reason that it has not been or cannot be clearly shown that the market value of the lands to which the notice relates is substantially and permanently increased by the improvement ;
  - (ii) That the amount of any charge proposed to be placed upon any lands in which he is interested ought to be varied ;
  - (iii) That the assessment is incorrect in respect of some matter of fact to be specified in the objection ;

At any time during the said period of three months after the last publication of the assessment the owner or lessee of any lands upon which a charge under this section is proposed to be placed who may be the owner or lessee of other property in the immediate neighbourhood of the improvement whether within or without the limits of deviation and of land to be acquired may give written notice to the corporation that substantial and permanent decrease in the value of such other property has been caused by the improvement, and that he claims that such decrease shall be considered by the arbitrator and if it be clearly shown that any substantial and permanent decrease in the value of such other property has been caused by the improvement, the arbitrator shall deduct the same before determining the amount of the charge in respect of such lands ;

For the purposes of this section joint tenants or tenants in common may give any such notice as aforesaid through one of their number authorised in writing under the hands of the majority of such joint tenants or tenants in common, and any lessees may combine in a notice ;

If no objection  
assessment final.

- (8) If at the expiration of the said period of three months no notice of objection shall have been served on the corporation then the corporation may publish notice to that effect in the London Gazette, and as from the date of such notice such assessment shall become final ;

Arbitrator  
to settle  
objections.

- (9) If any such notice of objection be served on the corporation within the said period of three months, then the corporation may apply to the Local Government Board to appoint an arbitrator for the purposes of this section and the Local Government Board shall appoint an arbitrator accordingly, and as often as any such arbitrator shall die or resign, or become incapable of acting (previous to the making of an award as hereinafter provided), the corporation may in like manner apply to the said board and the said board shall

from time to time appoint another arbitrator in his stead, and every such arbitrator shall be entitled to such fees or remuneration as may be fixed by the Local Government Board; **Appendix.**

Provided that at the time of serving an objection to the amount of the charge imposed upon any lands the owner, lessee, or occupier so objecting may give notice in writing to the corporation that he requires the same to be determined by a jury instead of an arbitrator, and thereupon the corporation shall forthwith issue their warrant to the sheriff or other proper person requiring him to summon a jury to determine the matter of such objection and to determine the amount to be charged upon the lands in pursuance of this section. Thereupon the matter of such objection shall (subject to the provisions as to costs hereinafter set forth) be determined in the same manner as a question of disputed compensation under the Lands Clauses Acts. The record of the verdict shall be delivered by the sheriff or other officer before whom such inquiry was held to the arbitrator who shall thereupon amend the assessment by inserting therein in respect of the lands to which the objection related the amount found by the verdict of the jury.

- (10) The corporation may any time before the appointment of the arbitrator but subject to the provisions of this section by resolution amend the assessment so as to include in the assessment as amended any lands by this Act made liable to have an improvement charge placed upon them and comprised in the initial valuation but not in the original assessment and may fix the sums proposed to be charged upon any such lands but any such resolution shall be published and copies thereof shall be served and copies of the amended assessment deposited for public inspection in the manner hereinbefore prescribed with respect to the original resolution and assessment, and objections may be made to the amended assessment in like manner and if made shall be dealt with and determined in like manner as objections to the original assessment; **Amendment of assessment.**
- (11)—(i) The corporation at any time after the appointment of the arbitrator may apply to the arbitrator to appoint a time for determining the matter of all objections made as in this section mentioned and for making an award, and shall publish a notice of the time and place appointed and copies of such notice shall be served upon the objectors and also upon the owners, lessees, and occupiers of any lands inserted or which it may be proposed to insert in the award (being in all cases lands by this Act made liable to have an improvement charge placed upon them and comprised in the initial valuation) and at the time and place so appointed the arbitrator may proceed to hear and determine the matter of all such objections. The arbitrator may amend the assessment on the application either of any objector or of the corporation. Provided that if he insert in the award **Procedure of arbitrator.**

**Appendix.**

- any lands or the name of any person not included in the original assessment or increase the amount of the charge on any lands such notice as the arbitrator may think sufficient shall be given to the persons affected to enable them to object to such insertion or increase ;
- (ii) The arbitrator may also, if he think fit, adjourn the hearing and direct any further notices to be given ;
  - (iii) No objection to any assessment, or award which could be made under this Act shall be otherwise made or allowed in any court proceeding or manner whatsoever ;
  - (iv) All the reasonable and proper costs of any such arbitration and of such inquiry before a jury and incident thereto shall be borne by the corporation unless the arbitrator shall award or the jury shall give their verdict for the same amount of charge as shall have been proposed in the assessment or for a greater amount in which case each party shall bear his own costs incident to the inquiry or arbitration and the costs of the arbitrator or jury shall be borne in equal proportions : Provided that if it shall appear to the arbitrator or in case of an inquiry by a jury to a judge of the High Court that any objection to the amount proposed to be assessed was frivolous and vexatious the arbitrator or judge may make such order concerning the costs of the person making such objection as to him may seem meet ;
  - (v) Where such costs are ordered to be paid or become payable by an objector or objectors the arbitrator may if he thinks fit add such costs to the charge apportioned on the estate or interest of the objector or objectors ;
- Final award.** (12) When and so soon as the assessment and any amendments thereof, and all objections thereto respectively shall have been disposed of as by this section directed the arbitrator shall issue an award under his hand, which shall be final and conclusive for all purposes ;
- A copy of the award shall be published once in the London Gazette and notice of such award shall be served upon the owners or reputed owners, lessees or reputed lessees and occupiers of the lands affected thereby ;
- Effect of charge.** (13) If no objection as hereinbefore provided be made to the assessment, the amount defined by the assessment or the amended assessment (and if an award be made as hereinbefore provided then the amount defined by the award) as the charge in respect of any lands shall be a charge and incumbrance thereon, and the corporation shall cause the same to be registered as a land charge under the Land Charges Registration and Searches Act, 1888 ;
- Incidence of charge.** (14) The charge in respect of any lands as fixed by the award shall (subject to the following provision) begin to be payable on the first day of April or October as the case may be next ensuing after the date of the award, and shall be payable thereafter half-yearly until redeemed and satisfied.

The improvement charge charged upon any lands shall be apportioned between the several parties having any estate or interest in such lands as they shall agree, or as in case of difference shall be determined by the arbitrator. **Appendix.**

The arbitrator in making the award shall take into consideration all the circumstances of the case and in particular shall consider the several interests in such lands and the time at which they severally expire and may make the commencement of such charge dependent on the expiration of any term of years or other period, or on the happening of any event as he shall deem fair and equitable. The improvement charge charged upon any lands shall be apportioned between the several parties having any estate or interest in such lands as they shall agree, or as in the event of no agreement being made, or so far as any such agreement shall not extend, shall be determined by the arbitrator, who may apportion the incidence of such charge as between the freehold and any other estate or interest in the lands, during the period of any existing term of years for which the same is held at the date of the award ;

- (15) The charge due in respect of any lands shall be payable to the corporation on demand, and may be collected on behalf of the corporation by such persons as they may appoint for that purpose ;

Where any lands in respect of which a charge is payable are occupied by any person, the corporation may collect the annual payments due in respect of the charge from such person. But if he be not the person for the time being liable to the payment of the charge or any part thereof, then he may deduct from any rent payable by him the charge or any part thereof payable by any other person, and any person receiving such rent (if he be not the person liable to pay the charge or any part thereof) may in like manner deduct from any rent payable by him the charge or such part thereof as is payable by any other person, so that the proper deduction may in each case be made from the rent paid to the person or persons by whom the charge or any portion thereof is payable ;

In case of default being made in any payment due to the corporation in respect of the charge the amount thereof may be recovered in any court of summary jurisdiction, and in addition the corporation may have and exercise such remedies for recovering the same as are conferred by the Conveyancing and Law of Property Act, 1881, with regard to sums payable by way of rentcharge ;

- (16) Any owner, lessee, or occupier of any lands subject to the charge or any other person interested therein may from time to time redeem the same by agreement with the corporation, and shall be entitled from time to time to redeem the charge upon any lands on payment to the corporation of any arrears thereof, and of a sum equal to

Collection of charge.  
Redemption of charge.

**Appendix.**

- thirty-three times the amount of such charge, and from and after such redemption the charge shall be deemed to be satisfied, and shall be no longer payable in respect of the said lands, and the corporation shall give a certificate under their common seal that the said charge is redeemed and satisfied, which shall be sufficient evidence thereof;
- Purchase of  
estate or  
term in  
certain cases.
- (17) If (a) any owner or owners of any lands in respect of which a charge is payable under this section who alone or together have power to sell the fee simple of such lands subject to any lease or leases thereof or (b) any such owner or owners of any such lands and any lessee or lessees of the same for a term having not less than twenty-one years to run at the date of the initial valuation who alone or together have power to surrender his or their lease or leases so that the terms of years thereby created shall merge in the fee simple and inheritance of such lands are of opinion that such charge is greater than it should be in reference to the enhancement or supposed enhancement of the value of such lands by reason of the improvement they may at any time within six months after such charge first becomes payable by notice in writing served upon the corporation require them to purchase their estate and interest in such lands and the corporation shall thereupon purchase and take the same accordingly at the value specified in the initial valuation;
- (18) If within one month after the receipt of any such notice by any owners or by any owners and lessees requiring the corporation to purchase their estate and interest in any lands in manner aforesaid the corporation shall elect to abandon the proposed charge to which such notice relates the corporation may give notice by registered letter addressed to such owners or to such owners and lessees of their intention to abandon the same and thereupon the corporation shall be relieved from any liability to purchase such lands or the estate or interest therein to which the notice relates and the charge so far as relates to such lands or any estate or interest therein shall cease provided that the corporation shall pay to the owners or to the owners and lessees as the case may be all costs charges and expenses reasonably and properly incurred by them in consequence of the said lands having been included in the assessment such costs failing agreement to be settled by a master of the High Court;
- As to exist-  
ing contracts.
- (19) Where the incidence of the charge as between any persons interested in the lands is regulated or affected by contract or covenant, the arbitrator shall have regard to such contract or covenant, and this Act shall not be deemed to alter the effect of such contract or covenant;
- "Lands"  
not to  
include  
pipes, etc.
- (20) The expression "lands" in this section shall not include any main pipe or apparatus for supplying gas or water or any culvert, pipe, tube, apparatus or wire for electric lighting, telephone or hydraulic purposes, or any estate or interest

in land in respect of any such main pipe, apparatus, culvert, **Appendix.**  
tube or wire.

- (21) The Arbitration Act, 1889, shall, subject to the provisions of Arbitration of this section apply to the arbitrator and procedure before Act to apply. him, except that the award shall be final, and binding on all parties.

These clauses were inserted in the London County Council (Tower Bridge, Southern Approach) Bill, by a committee of the House of Commons, in the session of 1895.

In making the initial valuation under the provisions similar to s. 22 (2). *supra*, it was held in respect of a "tied" public-house, (1) that in valuing the land apart from the buildings thereon, the valuer might not take into consideration either the takings and payments of the public-house, nor the fact that it was "tied"; (2) that in valuing the land and buildings as a whole, evidence of the takings and payments should not be admitted even for the purpose of testing the evidence of witnesses, and that on this head the fact that the house was tied was immaterial; (3) that in valuing the interests of the owner and lessees, the tying covenant must be taken into consideration (*In re London County Council and the City of London Brewery Co.*, [1898] 1 Q. B. 387).

By the London County Council (Improvements) Act, 1897, the council were empowered to widen T. street, and to place an improvement charge on property included in an "improvement area," which was defined as meaning "the lands all or any part of which front or abut upon the west side of" T. street. A music hall, the principal entrance to which was in another street, had also an entrance from T. street through a house of which the owners of the hall were lessees:—*Held*, that the improvement charge might be put on the whole property, and not merely on the house in T. street (*The Oxford, Limited v. London County Council*, [1898] 2 Ch. 491).

**Appendix.****THE CORPORATION OF EDINBURGH v. THE  
NORTH BRITISH RAILWAY COMPANY.**

The following is an extract from the text of Lord SHAND's proposed Finding (a) in the arbitration between the Corporation of Edinburgh and the North British Railway Company, as to the value of the land taken by the latter in Princes' Street Gardens. The corporation first made a claim for £80,000. The claim was increased to £150,000; and it was this sum that was put before the arbiters. Lord SHAND finds that the fair value of the land taken was in all £26,500 :

**PROPOSED FINDINGS IN ARBITRATION BETWEEN THE CORPORATION  
OF EDINBURGH AND THE NORTH BRITISH RAILWAY COMPANY.**

Edinburgh, 25th October, 1892.

Having fully considered the evidence, oral and written, and the arguments of counsel, and having also learned the views of the arbiters, orally and in writing, at a meeting with them, when they intimated that they were unable to agree to an award, and having repeatedly visited and inspected the ground, I propose to find that the sum due and payable to the claimants by the respondents, the North British Railway Company, as compensation to the claimants:

*First.*—For their interest in the lands and hereditaments taken by the company by virtue of the provisions of the North British Railway (Waverley Station, etc.) Act, 1891, and Acts therewith incorporated under their notice and relative schedule referred to in the proceedings, and specified in the Joint Minute, No. 61 of Process, and for the damage or injury sustained, and to be sustained by the remaining lands belonging to the claimants, by or through the taking of said lands and hereditaments, amounts to the sum of twenty-three thousand five hundred pounds. *Second.*—For their interest in the lands belonging to the Bank of Scotland referred to in the said notice and relative schedule and joint minute amounts to the sum of one thousand pounds. And, *Third*, for their interest in the lands belonging to the Crown, also referred to in the said notice, and relative schedule and joint minute, amounts to the sum of two thousand pounds—making in all the total sum of twenty-six thousand five hundred pounds.

I allow representations against these proposed findings to be lodged by either party within eight days from the date hereof.

(Signed) SHAND.

NOTE.—I have had no difficulty in holding that the principle of fixing the compensation payable by the company on the basis

(a) The "findings" are called "proposed findings;" but they were acquiesced in.

of reinstatement is quite inapplicable to the circumstances of the case. Where a church or public building or business premises are taken or so seriously interfered with by a railway company that they can no longer be properly used for the purpose for which they were erected or occupied, the cost of reinstatement is, generally speaking, a fair mode of fixing the compensation due. Even in that case it has never been held that the sum payable is to be taken on the footing that immediately contiguous ground must be substituted as the site for new buildings, and the costs of this paid for, though it may involve the purchase and removal of other buildings, however valuable, on such contiguous ground. In such cases the cost of reinstatement is given by taking the most suitable and convenient ground which can be obtained without imposing any such extraordinary condition as that of purchasing adjacent ground, however great its value, and though already covered with expensive buildings.

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Again, reinstatement or the offer of a sum sufficient for the purpose, may often form a good answer to an extravagant claim, as, for example, in the case of an exorbitant claim under a fire insurance policy, or it might be even in a case like the present, where parts of a property have been taken. If the company could have pointed to garden ground which might be got on reasonable terms, and which, from its situation, would form a fair substitute for the ground taken, and as such might be added to the gardens, the cost of such reinstatement might form a just measure of the compensation to be paid for the ground appropriated. In this instance no such proposal can be made by the company, because the circumstances do not admit of it.

In the case which has here occurred, of gardens or pleasure ground with an existing railway passing through them, as it has done for nearly half a century, it is impossible to suggest that, in consequence of the ground taken, the gardens have been now made unfit for the use to which they have been hitherto dedicated, or have been so seriously injured that substituted ground adjoining is required to render them useful and suitable for the purpose they now serve. Accordingly, the view presented by the first two witnesses for the claimants (resulting in a valuation of upwards of £150,000), that the company must pay for the two acres appropriated, and which have been taken in strips of varying breadth from different parts of the banks of the gardens adjoining the existing line, at the estimated rate which it would cost the company to acquire land in Princes' Street, to be substituted by way of reinstatement, is so extravagant that it required only to be stated to be at once rejected. If the principle were sound, it must go the length in its application of giving the corporation right to a sum which would not only pay, as the witnesses suggested, the enormous estimated value of the valuable sites or stances on which buildings now exist, but would also pay for the cost (under an Act of Parliament, which the legislature would never grant) of throwing Princes' Street considerably further to the north, and taking down the valuable buildings on its present frontage, an amount which no one could possibly estimate or predict.

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**Appendix.** While the parties have been allowed eight days in order to make any representation which they may desire to do against any proposed judgment, I do not invite any further argument. The views of both parties were fully stated by Mr. Murray and the Solicitor-General in their able pleadings at the close of the evidence, and have had my best consideration.

(Initialed S.)

This note was printed in full in the previous edition, but it has not been thought necessary to retain more than the first part of it, which deals with the principle of reinstatement.

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## SPECIAL ADAPTABILITY.

The question whether the "adaptability" of the land taken to the purposes for which it is to be used, is to be taken into consideration as an element of value in compensating the owner, is so frequently raised in arbitrations, that it is a matter of some importance to have the full text of the judgments which have been delivered as to this matter (see notes, *ante*, pp. 102, 352). "Adaptability" as enhancing the value of the land taken was raised by the claimant in the arbitration between the Countess Ossalinsky and the Manchester Corporation. After the award had been made the matter came before the High Court of Justice on April 13th, 1883, and, so far as we know, the case in the High Court of Justice has not found its way into any of the law reports. Under the circumstances we have set out the judgments of GROVE and STEPHEN, JJ., *in extenso*. We are indebted to the town clerk of Manchester for the transcript from the shorthand notes from which these judgments are taken.

IN THE MATTER OF AN ARBITRATION BETWEEN THE COUNTESS  
MARY OSSALINSKY

AND

THE MAYOR, ALDERMEN, AND CITIZENS OF THE CITY OF  
MANCHESTER.

*Judgment.*

GROVE, J.—In this case a rule was obtained by the Attorney-General to set aside an award in the matter of an arbitration between the Countess Ossalinsky and the Corporation of Manchester. The arbitration was for the arbitrator to settle the value of certain land belonging to the Countess Ossalinsky, the greater part of it bounding Lake Thirlmere. She has in her land a long strip extending to nearly two-thirds along one side of the Lake Thirlmere, another portion of land upon the south side of Lake Thirlmere, and another small portion upon the east side; two other detached portions a small distance off, within a certain line which is put here as a probable or possible extension of the lake of Thirlmere into a reservoir, and certain other portions of land which I do not think it necessary I should notice in detail.

The arbitrator made his award, giving a sum of £64,000 as the value of the land and a certain contingent valuation depending upon the opinion of the court upon a special case, which he sets out at the end of his award.

The objections made on which the rule was granted were these: "That the arbitrator in estimating the value of the land has improperly taken into consideration its enhanced value, or alleged enhanced value, by reason of the water that may be collected, diverted, and impounded upon the land, and also by reason of its natural and

**Appendix.** peculiar adaptation for the construction of a reservoir." That is the point on which it was moved, and the point that has formed the main ground of argument by the Attorney-General and Mr. Davey who followed him.

The next objection is, "That the arbitrator has taken into consideration the increased value of the land in consequence of the powers conferred on the Corporation of Manchester by the Manchester Corporation Waterworks Act, 1879." That is the point which would, amongst these points, be the most serious legal objection if it had been founded upon this award. It then states another objection, that "He has taken into consideration the value of the land to the Manchester Corporation"—that is another form of the same objection, and then it says: "And that the said award is ambiguous and uncertain, and does not sufficiently declare in respect of what heads of claim the award has been made."

Those are in fact four objections, but they appear to be reduced to one, because the rule goes on to say: "Secondly that the arbitrator has improperly valued the reservations in favour of the lord of the manor of certain mines, minerals, rights, royalties, and franchises specified in an indenture." That we need not now deal with as the Attorney-General has not insisted upon it, and Mr. Davey has abandoned it. I do not think anything further need be said on that; and therefore the principal head of objection is taking into consideration the enhanced value of the land for its adaptability—that is the word used by the arbitrator—for forming a reservoir or collecting and impounding water usefully for the purpose; and he has taken into consideration the enhanced value in consequence of the powers conferred on the Manchester Corporation.

It is as well to state the general grounds upon which courts set aside awards of arbitrators. It is merely using proverbially common language to say awards ought not to be set aside except on very strong grounds and for very strong reasons. The great advantage of an arbitration I have always considered is in the finality of the award, and I am sure at the present day one would not if one could help it, and was not legally obliged to do it, lessen the security which persons have who submit to the increased expense of arbitrations by removing the main element of value of them to litigants from their finality. You have an arbitrator who decides the law and the facts. You have not got a series of motions and appeals, interlocutory and final—perhaps not even finally ending when there is a decision in the House of Lords because on certain grounds a new trial may be got. I do not think it would be desirable to increase the uncertainty or the enormous expense of our legal system by opening up any new ground for setting aside awards other than those which courts have previously held to be good.

Now I do not pretend to give an exhaustive catalogue of the grounds upon which awards are set aside, but they are very few. One of the grounds on which courts have set aside awards is where the award is bad on the face of it; where it is repugnant; where it shows in itself that it has not followed the law; or for any other objection which may appear on the face of the award. Secondly, improper conduct in the arbitrator; when he has refused to hear

## Appendix.

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evidence, when he hears one side in the absence of the other, or any irregularity which, although it may not account to moral wrong, or justify one in calling the award a corrupt award, yet is substantial and is improper conduct of the case which is entrusted to him. Thirdly, awards have been set aside where there has been a mistake by the arbitrator either of fact or law which he himself admits, and when the court has before them evidence coming from the arbitrator that he himself admits he has made a mistake; and, fourthly when the arbitrator (and that is the only one that can apply at all to this case as far as I think)—has acted *ultra vires*—has gone beyond the powers which are conferred upon him. If that can be shown to a court by appropriate evidence, they will set aside the award. The arbitrator has to decide upon the matters submitted to him, and not upon matters which he may think desirable to settle in relation to the parties, but which the parties agree to submit to him, which the law has not thrown upon him. I think those four, as far as I know, are all the grounds on which courts have set aside awards. I should be very sorry ever to say that I had given an exhaustive definition, because such a thing is almost impracticable in legal matters, and in many other matters. Those are, I think, the grounds. The only one of those that can apply to this case is the latter one, that the arbitrator has acted *ultra vires*. In other words, that he has made an element of his calculation of the value of this land that which legally cannot or ought not to be an element in its consideration, namely, the enhanced value of the land on account of its capability of being used for diverting and impounding water or of being converted into a reservoir, or for any useful purpose for which persons would pay a substantial price. It appears to me that that in itself is not an objection to the award, and that the arbitrator ought to take that into consideration. If the land has what I may call an adventitious value, that is something beyond its mere agricultural or normal value, and that is a marketable value in this sense, that persons wishing, for a purpose for which the land is peculiarly applicable, to purchase that land, would give a higher price for that land, then the arbitrator has a fair right to take that into consideration; it is a matter no doubt contingent, but still it is a matter which is not to be ignored or put out of consideration by an arbitrator. Land may be agricultural land, but it may be so near a town that it is tolerably certain that in a few years it will be converted into building land—quite certain in a larger number of years, as far as we can speak of anything in the future being certain—it will be converted into building ground. It is quite true that land might be rightly valued at more than its value as agricultural land if the land had any other capabilities for railway, canal, or irrigating purposes, or for waterworks, or for anything else, and they are reasonable and fair capabilities, not far-fetched hypothetical capabilities but reasonably fair contingencies. Those are fair things to be considered by an arbitrator; not to give its full value as if the thing in prospect were actually accomplished, but to give the enhanced value—what it would sell to a willing purchaser for in consequence of its having these additional advantages. I cannot agree with Mr. Davey that that is not a matter which should be taken into consideration. I

**Appendix.** — have some difficulty in understanding his proposition, that if one line of land is more advantageous for railway purposes than another that that land ought not to have an increased value as regards the other on account of its value for railway purposes if it is in a district where there is a great probability or a reasonable likelihood of there being a railway constructed. It is quite another case when you come to the second head of objection here, namely, the particular value which the land is to one of the parties before the arbitrator. That is quite another ground. But supposing the general value is only given, if this land was probably certain, within a reasonable time, to be used for certain purposes which would give it a very much enhanced value, that is a matter for the arbitrator to take into consideration. I am clearly of opinion that it is, and that the arbitrator has rightly taken that matter into consideration.

Then comes the second head of objection, "That the arbitrator has taken into consideration the increased value of the land in consequence of the powers conferred on the Corporation of Manchester by the Manchester Corporation Waterworks Act, 1879, and has taken into consideration the value of the land to the Manchester Corporation where used for the purposes of carrying out the objects of, and the powers conferred by the said Act." That would be a serious objection to the award, and a fatal one, because, as far as my experience goes, it has been the invariable practice sanctioned by the courts that arbitrators are not to value the land with reference to the particular purpose for which it is required, particularly where the matter is under Parliamentary powers with reference to what the parties who are taking the land under compulsory powers are obliged by their necessities, or what they suppose to be their necessities, to pay for it there—that it is to be excluded from consideration, and the only way it can or ought to be put forward at all is as a possible illustration of the probability of the land being useful for such a purpose. You must not look at the particular purpose which the defendants in the case before the arbitrator are going to put land to when they take it under Parliamentary powers or undertakings for any special purpose, but you may possibly use it as an illustration to anticipate or to answer an argument that the schemes thrown out by the plaintiff in this case are going to enhance the value of the land are not visionary, but are schemes with certain probability in them. I do not see any objection to that being used as an argument. This is a matter of fact. Did the arbitrator take this into consideration? As far as I can see he did not, at all events his award is perfectly consistent with his not having done so, and I cannot set aside an award merely upon some possibility or guess that he might have done something wrong. I cannot see any inconsistency or anything in his award which leads me to the necessary conclusion from the language he has used to show that he did take this into consideration. With regard to the part of his award which bears on the subject and which has been a good deal canvassed by the counsel at the bar, that is a part which really is no part of the award itself, in one sense of the word—that is not the portion of the award which determines the price, and apportions the price, but it is the explanation which is given with reference to this, and it occurs in that part of the award which incorporates or adds to the previous award the

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special case. The arbitrator says, "And by way of special case for the opinion of the High Court of Justice I hereby state and find as facts that the land and hereditaments respectively described and comprised in the said claim of the said owner have by themselves and in conjunction with other adjoining lands a natural and peculiar adaptation for the collection, diverting and impounding of water and as a suitable site for the construction of a reservoir." Now he gives the grounds, or rather the conclusions which he has come to in estimating the value of the land, "I have in my awards and determinations hereinbefore contained in estimating the value of the land taken into consideration its enhanced value by reason"—not by reason of the Manchester scheme, not by reason of anything that I can see connected necessarily with the Manchester scheme, but "by reason of the water that may be collected diverted and impounded upon the said lands and hereditaments of the said owner and also by reason of its natural and peculiar adaption for the construction of a reservoir." Now that alone certainly seems a fair and proper ground for an arbitrator to take into consideration. It does not at all apply in any way specifically to the Manchester scheme, but for any purposes the parties may for various purposes require the impounding of the water, or require a reservoir, or for many purposes no doubt useful in this case, it might be for supplying water to towns more or less large, but at any rate they may require it for other purposes, and all he says is, I have considered that as enhancing the normal value of the land, because the land is capable of being so used. Of course an arbitrator cannot give it both ways. If he gives the enhanced value in that particular he must deduct the agricultural value of the ground which is rendered useless for agricultural purposes by water which is impounded and made to flow or lie over it. That he has done. I am not now entering on the rectitude of the values given by the witnesses, but that is done by the witnesses, because when they give a particular value for the land they deduct from that the value they give to it as agricultural land, which is, roughly speaking, somewhere about a third more. It does not appear that the arbitrator adopted their views—it is clear he did not. He adopted what turned out to be some mean between the valuers for the plaintiff and the valuers for the defendants, and that seems to me to be a right matter for consideration in itself, and there is nothing wrong on the face of the award in that respect.

Then the next paragraph tends to satisfy my mind not that he did take into consideration the Manchester scheme, but rather that he excluded it from his mind, because he says, "But I have not allowed for or included any sum in respect of the enhanced value of the land by reason of its natural and peculiar adaptation in conjunction with other adjoining lands for the collection diverting and impounding of water, and as a suitable site for the construction of a reservoir." He does leave a question to the court upon this, but at all events that to my mind tends to show that he not only excludes the Manchester scheme, but he excludes every scheme which would require the whole of the lake as it were, or a large quantity of water, so that the plaintiff's land might form part of a general scheme in conjunction with other lands. That, he says, "I have not found, but if it is to be taken into consideration then I give the court the

**Appendix.** sum I should give for it." That in my mind tends to show that so far from including the Manchester scheme he excludes it.

But then it is said it could not be of any value to the plaintiff herself without the other lands, because it does not surround the lake. It could not make a larger lake than the lake itself; and, though a portion of it extends to somewhere about two-thirds of the lake (that is only an assertion of counsel, because we have not had our attention called to any evidence on the subject), that could not of itself be useful. I do not know that. There is nothing in the evidence to show that a long strip of ground adjoining the lake might not be useful for a reservoir, even if the plaintiff had no other land. And in the same degree of the pieces at the end—the other more detached pieces would be of comparatively little use. That is a matter, no doubt, which the arbitrator considered. It is said the witnesses have given evidence and put it at so much an acre; therefore, we must assume that the arbitrator valued the land, some of which did not abut on the lake at all, some being some distance off, at the same value for impounding water as if the land touched the water—formed, in fact, the margin of the water. I do not see why we should assume that at all. The arbitrator was a land surveyor, and you could not choose a man as an arbitrator in a case of this sort who was not a man of considerable experience. He went twice, and made what was a perfectly careful investigation of the land, and I have no reason to suppose, because the witnesses put down a general sum as their calculation, being so much per acre, that he gave the same value to the pieces that could not positively be used, and could not positively enhance the value of the land for reservoir purposes, as he gave to those pieces which would be immediately available—it would be supposing that he would be totally unfit to sit as arbitrator, or to carry on his business of a land surveyor. I have nothing to show me that he did that, and I cannot assume it. I assume, in fact, just the reverse. I assume he did value each piece according to its particular capabilities, and when the land was not enhanced by its capability of being turned into an impounding place or reservoir, he did not put any increased value on that portion, but I assume that he acted with ordinary common sense, or something less than ordinary common sense. Unless he was perfectly ignorant he must have assessed the value of the land in a reasonable way, and there is nothing to show me that he did not.

Now some passages have been cited to us where the learned counsel for the claimant, Mr. McIntyre, no doubt, made use of the Manchester scheme, and I have not the slightest doubt that Mr. McIntyre did not at all conceal from the arbitrator the fact of this large scheme of the Manchester works. But if we were to set aside an award because counsel avail themselves of what they think may be a taking argument with the judge, I do not suppose any award could stand, and I hardly know how counsel could conduct their case, because they would run the risk, if they put their client's case in a highly favourable way, of destroying the award made in their favour, because they used some argument which the court, when the case came before it, considered fallacious. In other words, we should have a sort of special pleading investiga-

tion of language used by counsel in opening a case to a jury, or an arbitrator in every case that we come to consider. I do not mean to say there are not cases in which we should have to take into consideration the language of counsel. There are extreme cases in every line of case; but merely because Mr. McIntyre made the most of the Manchester Corporation scheme, that is not a ground upon which we can set aside the award. Mr. McIntyre does very carefully (and, I think, every passage has been cited), though he talks about the Manchester scheme, always add the words that the water is equally convenient, or very convenient, for other places besides Manchester. But the arbitrator himself, and that is the only passage I will cite from this report, seems to put the matter upon the right ground, because, when after Manchester has been mentioned, and when this point of enhanced value is being argued, he says this: "I apprehend the argument is that where an owner has an area of land, which from natural circumstances and character is peculiarly suited to a particular purpose, that it is an element in the value, and is a matter for consideration how far it should enter into the compensation. If we take two properties, each of them capable of being made into a reservoir, but one is, by natural circumstances, and by a peculiar fitness of position and character, capable of being made into a reservoir at less expense, and the other at greater expense, then the question is, is it an element which would form part of the compensation which the landowner would be entitled to receive?" He does not give any opinion here upon that, but he does say afterwards in the award, that he has taken into consideration the enhanced value. It appears to me as he has put it here it is perfectly fair. He says nothing about the Manchester case, but really supposing it to be a property, which, by natural circumstances and peculiar fitness of position and character, is capable of being made into a reservoir, that seems quite a right observation, and he really himself put the argument as to that portion of it which he ought to have taken as an arbitrator, and which was a fair and legitimate subject for his consideration. How much he should give for that was a matter for him. What proportion of this contingent value he should give was a matter he must deduce from the witnesses, his observation of the ground, and his own general knowledge of the capabilities of the localities, and their surrounding neighbourhood. It seems to me, therefore, from this award, and the expression I have just quoted from the notes when this argument was presented to him, that he took the right ground. There is not a single fact stated from the shorthand writer's notes to show me that the arbitrator did that which he ought not to have done, namely, based his valuation upon the particular circumstances and particular price which the Manchester Corporation might be interested to pay for this compulsory sale. I think, therefore, that fails. Of course, if I were to meet all the arguments of counsel I should occupy an unreasonable time, but that meets the two objections—the first and second objection—the second one being the formidable one, if made out, but it is not made out.

Upon the first of those objections we heard at some length Sir Henry James as to whether we could go into it or not, that is to say, whether we could inquire into counsel's speeches, evidence,

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**Appendix.** and matters which took place before an arbitrator, and look at the shorthand writer's notes of evidence for the purpose of setting aside an award. My opinion certainly was, as I said to the Attorney-General at the time, that we could not certainly as a general rule, and I believe my brother STEPHEN expressed his view to the same effect, but we need not decide that question here, because we thought it better, and that it might possibly save expense in the end to the parties if we heard *de bene esse*, so to speak, what had to be said. I am of opinion that, having allowed the Attorney-General and Mr. Davey to go into this evidence—to enter at full upon the matter—they have not shown any grounds upon which this award could be set aside, therefore I need not give judgment on that, as to whether we ought to have heard this evidence as we have done. In my opinion the materials are insufficient to set aside this award.

Then comes the further objection, "The said award is ambiguous and uncertain and does not sufficiently declare in respect of what heads of claim the award has been made." I cannot find out any substantial ambiguity in this award—I mean reading it as it should be read, with a willing mind, to use the expression of Mr. Justice MAULE, that is, with a mind desirous of understanding what it means and not misunderstanding what it means. I have no difficulty at all in ascertaining the meaning of this arbitrator. No doubt there is a grammatical error in one part of it; a word is omitted or a word is used in perhaps not strictly the correct sense, but I have no difficulty in ascertaining what he means. He says: "I hereby state and find as facts that the lands," etc., "have by themselves and in conjunction with other adjoining lands a natural and peculiar adaptation for collecting, diverting, and impounding of water." That word may be incorrect, because the lands do not adapt themselves, and the word would not be quite accurate. It would have been better if he had used the word "adaptability" instead of "adaptation," but it is impossible to misunderstand what he meant—that they are capable of being adapted.

Another objection was: "And as a suitable site for the construction of a reservoir"—they are capable of being adapted as a suitable site. No doubt there is an ellipsis, and it is not strict grammar. It does not say, and valuable as a suitable site, or adaptable as a suitable site,—some such word is wanted, or you want another word before it to carry on the second branch of the sentence; but it is clear to anybody who does not strain his mind to make objections, and to find out whether the matter is unintelligible, because there is something which grammatically is not quite correctly expressed. If we were to upset awards on that ground, then it would be no use for parties to go to arbitration at all. In my opinion, there is no ambiguity in the fair sense of the word, that is to say, there is nothing which to a willing and intelligent mind, is not perfectly plain on the face of this award, and that there is no such ambiguity, nor is there any ambiguity in the claim set out, because this very claim is part of the general claim as to the value of the land. It is not specially mentioned in the notice to treat, but if you were to do that you would not clear up the things, but you would make them such complex legal documents

that we should have a great many more applications to set aside awards than we have now if you were to have the notices all written as you would a deed or a document of that sort. I do not think its ambiguity would be increased, and the power of objecting to it would be very much increased indeed.

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Then the last objection. I have already adverted to the reservations in favour of the lord of the manor. Mr. Davey has abandoned that. Supposing his finding is wrong upon that, that is no ground for setting aside this award.

Therefore, on all these grounds, I am of opinion that nothing has been shown to me to satisfy me that this award ought to be set aside; and, as I said before, I am of opinion in order to set aside an award there should be a strong case. In this case I am of opinion that no such case has been made out, and, therefore, the rule must be discharged.

STEPHEN, J.—I am of the same opinion, and I agree so entirely with all that has been said by my brother GROVE that I should have expressed my own views on the subject very shortly indeed were it not that the case has occupied a very considerable time, namely, a day and a half; but I think that very large part of that time has been spent in debating matters which have ultimately resolved themselves into a small compass. In the first place, there was a very great debate as to whether the Attorney-General should be allowed to go into all that took place before the arbitrator with a view of showing that the arbitrator had in fact taken into his consideration, in the matter of awarding damages, things which he ought not to have taken into consideration. We permitted him to do so because we thought, upon the whole, it was the safer and more advantageous course to take for the parties. Whether we were strictly justified in what we did, according to law, I need not decide, but I only say that I think the decision which we have now given is not to be taken as a precedent tending to show that such an inquiry is proper. The fact is, that each case stands upon its own circumstances, that it is simply impossible to lay down general rules as to how far you can and how far you cannot go in inquiring into what passed before an arbitrator. There can be no doubt that a case might be imagined, in which the award might be perfectly good on the face of it, and in which, nevertheless, it might be proved, so as to leave no substantial doubt on the subject, that the whole arbitration had been conducted on a false basis—that matters had been introduced which ought not to have been introduced, and that damages had been given in respect of things which were not properly before the arbitrator. There are one or two cases in the books to which our attention has been fully called, in which inquiries of that kind were undertaken with various results.

I think, however, that having heard all that could be said upon the subject, first by the Attorney-General and next by Mr. Davey, I have as little hesitation as my brother GROVE in coming to the conclusion that the corporation have shown no cause which would justify us in setting aside this award, and that they have entirely failed to prove that the award does in fact award compensation in

**Appendix.** respect of any matter for which compensation ought not to have been awarded, or that the controversy before the arbitrator was conducted in a way in which it ought not to have been conducted.

The argument by which the Attorney-General sought to prove his case was so refined and so elaborate, and involved so long a series of steps that the mere intricacy of the argument appeared to me to afford an uncertainty to it. The argument was something of this kind: Look at what Mr. McIntyre said when he opened the evidence before the arbitrator; then look at what the witnesses said to the arbitrator; then look at the value which was put upon the different matters upon which the arbitrator adjudicated; then look again at some of the expressions in the award, and if you put the first three things together, one after the other, and construe what the arbitrator said by something which Mr. McIntyre inferred from something which the witnesses stated which is to be construed in reference to a case which Mr. McIntyre opened, and when you have put all that together you will see that it was morally impossible that he could have given so large a sum as he did give unless he had taken into account something which he ought not to have taken into account; and, moreover, when you look at all these various matters over again for another purpose, you will be able to form an opinion as to what this forbidden thing was which he introduced into his award, and so rendered it void. That, I say, is something far too elaborate an argument in a matter of this kind. If such arguments were admitted you would have a motion for a new trial substantially upon every award which did not give satisfaction to both parties—in other words upon every award. The thing which it is impossible not to see, having heard the case argued from beginning to end, the plain truth is simply this, the arbitrator did award to the Countess Ossalinsky a very large sum of money—a sum of money considerably larger than anything that her opponents conceded she ought to have—considerably less than those which her more enthusiastic witnesses considered to be her due. In fact, he took something which may be described roughly as a kind of mean between the highest that was claimed for her by Mr. McIntyre's witnesses and the highest that was conceded to her by the Attorney-General's witnesses: it came in practice to something very much like that. Now, I do not say a word about that. It is extremely natural that the corporation of Manchester should not like it. It is extremely natural that they should use every means in their power to set it aside; but what they really and truly want is to get what they consider an exorbitant award set aside; and the reasons which they have given to have it set aside are all it seems to me a variety of subtleties by which they try to call in question that which it is a characteristic feature of arbitrators to exclude from question. That is the way in which the matter struck my mind. I do not say one word as to the propriety of the award—neither for it nor against it. All I say is that on the face of it, it is a regular award, and as far as we have thought it right to inquire into what passed before the arbitrator—it must be observed we have shut out absolutely nothing that the parties could be desirous of bringing before us—I fail to see that there has been any such improper conduct or misconception of his duties proved on the part of the arbitrator as would be a ground for setting aside the award.

The case is one of a large amount and of some importance on other grounds, and although my brother GROVE has stated his views, and although I have stated my own agreement with them, I will, nevertheless, very shortly indeed, notice the different objections which have been made to this award, and the different grounds upon which those objections appear to me to fail.

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The first objection is: "That the arbitrator in his award and determinations in the award contained has in estimating the value of the land improperly taken into consideration its enhanced value, or alleged enhanced value, by reason of the water that may be collected, diverted, and impounded upon the said land, and also by reason of its natural and peculiar adaptation for the construction of a reservoir." Now, leaving out the word "improperly"—that he did do that which is here described as an improper taking into consideration is undoubtedly true, because those words are copied out of part of the award, but for the reasons which have been given by my brother GROVE I think in doing so he did his duty. What I understand him to have said is this: The natural construction of this ground, a large part of which is owned by the claimant in this case, is extremely peculiar, it presents features so favourable for making a reservoir that they may be called almost unique, and that has been likened to a great number of things in the course of the argument. The commonest, and perhaps the fairest, illustration that may be taken may be this—it is like the common case of building land. There is land on which buildings may be raised—it is an every day practice—here is land which is suited for building; here is a railway near it; it is the intention of the railway company to put a station in the immediate neighbourhood which will enable people to build villas upon this land. Now, land so situated undoubtedly derives a considerably increased value from these circumstances, and if any person wishes to take that land, or say, if another railway company wishes to come in and cut across it, no doubt they would have to pay, not the agricultural value of the land, but they would have to consider the value of the land as building land, and also have to consider how its value as building land would be affected by the intention of the railway company to make a junction or to build a station in the neighbourhood. As to this particular piece of land, I will not say it is unique, but it is very nearly unique; it is one of the small number of places which is capable of being made into a reservoir which would supply any towns with which they might be connected. We all know that Thirlmere lies very high—perhaps I have no right to import my own knowledge of the country into it, but I think it would not be very much less than 800 or 900 feet above the sea level—the top of the water—and with a large quantity of water at that level you might carry it to very nearly any large town in England, that being so it seems to me quite absurd to say that there is not a special value attaching to that particular matter, or to say that the Countess who owns a part of it should not be compensated on that footing. No doubt it has been pointed out very fully by the Attorney-General and by Mr. Horace Davey, that her land alone might not, or probably would not, make a reservoir, because it does not go all round the lake, and because parts of the land are scattered about. No doubt that is perfectly true, but then at the same time it contributes to it,

**Appendix.** it is absolutely essential to a reservoir, and no reservoir could be made in those parts without taking her land any more than a reservoir could be made on her land without taking the land of other persons in the neighbourhood. But when you come to consider the value of the land you have to take, you must assume that people will act in the usual way, and no doubt whenever any reservoir is made at Thirlmere it would be made under parliamentary powers, which would be applied for by the persons who were desirous of making the reservoir, and that whether the water travelled northwards down to Keswick in that direction, or whether it travelled southwards in tunnels and so on to Manchester, or wherever it was wanted to go—wherever it might be wanted to go, and under whatever circumstances Thirlmere might be turned into a reservoir; it would be absolutely necessary that the Countess Ossalinsky's land should be taken, and it seems to me it would be altogether improper to deprive her of the benefit derived from that circumstance. I think that is all the arbitrator is alleged to have done in this objection, and all that he is shown to have done from an examination of the award.

Then it goes on to say, "That the arbitrator has taken into consideration the increased value of the land in consequence of the powers conferred on the Corporation of Manchester by the Manchester Corporation Waterworks Act, 1879, and has taken into consideration the value of the land to the Manchester Corporation where used for the purposes of carrying out the object of and powers conferred by the said Act." Those two objections are the same presented in slightly different forms. If they could be made out I think the award would be bad. Much was said, and many illustrations were suggested, and many discussions took place on this subject, but they all appear to me to come ultimately into a very small compass indeed, which may be stated thus: When a railway company, or any other person who takes land under compulsory power, is to pay for that land, you are not to make them, as it were, buy it from themselves; you are not to take the value which, in their hands, it would acquire, and make them pay for it as if they had no compulsory power. That seems to rest upon a basis of perfect good sense, because, if you were, there would be really no value in those compulsory powers at all; but I do not see that the award does so, and I do see, on the contrary, that the award distinctly says, in the plainest language which the arbitrator can use, that he avoided doing so, and did not do so. He says, "I have in my awards and determinations hereinbefore contained in estimating the value of the land taken into consideration its enhanced value by reason of the water that may be collected, diverted, and impounded upon the said lands and hereditaments of the said owner and also by reason of its natural and peculiar adaptation for the construction of a reservoir but I have not allowed for or included any sum in respect of the enhanced value of the land by reason of its natural and peculiar adaptation in conjunction with other adjoining lands" for those purposes. I think when that is read in connection with the evidence which has been adduced, and upon which the Attorney-General and Mr. Horace Davey commented, to my mind it seems to me clear that what he tried to do was to put a value on the land, having regard to its fitness for the purpose of a reservoir, but not having

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regard either to the adjoining lands, which had advantages of their own, or to value attached to it by the Manchester scheme. He seems to me to have done what he could to avoid making the Manchester people buy their own improvements, and that is really what it comes to; at all events, putting it at the lowest, I do not see the very smallest shadow of proof that he did not do so; I see that there was evidence before him from which he might draw practically any inference which he liked. I see that he states in his award what the inferences are he did draw, and although the Attorney-General and Mr. Davey argued long and elaborately, and pressed us hard to say that in point of fact he had drawn the inference which he repudiated, and that in point of fact he had done what he tried hard not to do, I cannot follow that argument, and find as a fact that he did do so.

Therefore, on the whole I say, those two things are not made out. What is really made out is simply this: That he gave a very large sum by way of compensation, and without any arithmetical proof that he must have adopted a certain estimate—in the face of arithmetical proof that he did not adopt those estimates still we are told we must not suppose he drew an inference which he repudiates, because that inference can be logically justified on no other ground. I do not think it would be right to draw such an inference as that. That disposes of the second and third of those objections.

Then comes the ambiguity and uncertainty of the award, and I must say with regard to that I do not think I need add anything to what has been said by my brother GROVE. There is a little confusion or bad grammar, and I rather suspect, myself, there is a word or two left out there, but that is all that I can see in the matter. It would be trivial to insist on that.

Then, Mr. Davey also argued at some length that the plan was part of the award, and where as the award says that this land has a natural and peculiar adaptation for the construction of a reservoir, if you look at the plan the plan will show that the land by itself has no such natural adaptation for the purpose of a reservoir, because it does not go all round the lake. I think that is importing a kind of literality into the construction of a document of this kind which is to be deprecated, and which I should rather describe as doing one's best to misunderstand it instead of doing one's best to understand it. I think it is obvious what he means. He means this land is adapted for the purpose of a reservoir in this way, that by means of it anybody who got possession of other land would be able to construct a reservoir at very little expense, and that without it no reservoir could be constructed, and that therefore, it is specially adapted for the construction of a reservoir, although by itself it would not constitute a reservoir.

The last matter about the reservations was given up by Mr. Davey and also by the Attorney-General.

The result is that I agree with my brother GROVE that this rule must be discharged, with costs.

Mr. McIntyre.—Your lordship will give us the costs?

GROVE, J.—The rule is discharged with costs.

**Appendix.****IN RE RIDDELL AND THE NEWCASTLE AND GATESHEAD WATER COMPANY.***December 13th, 1878.***LAND TAKEN FOR RESERVOIR—COMPENSATION WATER—  
SPECIAL ADAPTABILITY.**

In this case the amount of compensation to be paid to Mr. Riddell by the company had been referred to the late Mr. John Clutton. The land taken, of which Mr. Riddell was the tenant for life, was authorised to be taken by the Water Companies Acts of 1876 and 1877, for the purpose of making three Swinburn and Coltercragg reservoirs and other works. Mr. Clutton, by his award, determined the amount of the purchase-money to be paid by the company to the owner for the purchase of the lands, easements and premises required to be purchased and taken by the company, and the compensation for the damage that might be sustained by Mr. Riddell by the execution of the works. The award ran as follows: "As part of the compensation for the damages which Mr. Riddell would sustain by the execution of the works already mentioned, Mr. Riddell claimed before me a large sum for the water which the company could divert and impound by the said works, and in the before-mentioned sum of £17,600 I have not included any sum for such claim, it being contended by the company that I was precluded from so doing by reason of the seventh sub-section of the ninth section of the Act of 1877, but if the court shall be of opinion that this section is not a bar to the said claim, I award the amount of £5,000, which sum I award in addition to the before-mentioned sum of £17,600."

The section referred to provided that, for the protection of Mr. Riddell, the company should be bound to discharge every day not less than 200,000 gallons of water into a stream called the Dry Burn, below the site of the little Swinburn reservoir, and the seventh sub-section provided that such water should be taken as part compensation for all water which the company could collect, divert and impound by the works authorised by the Acts.

We print below the judgments of MELLOR and MANISTY, JJ., and also the judgments in the Court of Appeal, from the shorthand notes of Messrs. Walsh & Sons, 17, Parliament Street, Westminster.

**IN THE MATTER OF AN ARBITRATION BETWEEN JOHN GIFFORD  
RIDDELL****AND****THE NEWCASTLE AND GATESHEAD WATER COMPANY.***Judgment.*

Mr. Justice MELLOR.—In the case I have looked at the papers since the last sitting of the court and have come to the conclusion that the arbitrator in excluding the additional sum of £5,000 in respect to an extra claim made before him on the score of water rights or water privileges was right, and that the company are only bound, as it appears to me, to pay that sum of £17,600 which the

arbitrator has awarded as compensation to Mr. Riddell in all other respects. The first Act of Parliament called "An Act to authorise and enable the Newcastle and Gateshead Waterworks Company to construct additional works and to raise additional capital and for other purposes," contains recitals appropriate to the contemplation of the works which they were desirous of obtaining authority to make, and then it goes on to say that the power of the company ought to be enlarged and makes various incorporations of the Railways Clauses Act, the Lands Clauses Act, the Waterworks Clauses Act, and the provisions of the Companies Clauses Consolidation Act in respect to certain matters as to capital and so on. Then it enables them to make three, I think, reservoirs, aqueducts, and various other things, and to divert a number of streams or burns of various sorts, all of which they are enabled, as it were, by this Act of Parliament to impound and collect for the purposes of their works. It says they may take, use, divert and appropriate for the purposes of the works authorized by this Act, the following streams: "Dry Burn, Reed Sike, Carry Burn and Small Burn, and all other streams and waters on the deposited plans, or found in or under any of the lands for the time being belonging to the company."

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Then it gives them other powers and there is provision as to the time for the completion of the works, and various other powers are given to the company for the purpose of completing their works, and it makes valid an agreement which had been come to between the parties upon the 16th May, 1876, and that is mainly an agreement which is carried out by this Act of Parliament, and it makes provision amongst other things for various supplies of water to various farms, to the castle, and other similar provisions for the benefit of Mr. Riddell, his heirs and assigns.

Then it goes on, as far as my memory serves me, having done that, to provide "The works hereinafter agreed to be made and constructed by the company shall not be accepted and taken in lieu and satisfaction of works mentioned in or which may be required to be made or constructed under the Lands Clauses Consolidation Act, 1845, the Waterworks Clauses Consolidation Act, 1847, and the other general Acts, except so far as the works hereinbefore agreed to be made and constructed as are or become necessary in substitution for work mentioned in or which may be required to be made or constructed under the said general Acts, or any of them." Then the agreement is to be void if the bill does not pass into law. Of course, if they carried into effect all of their powers and diverted all the streams I have referred to, it will leave Mr. Riddell without sufficient water, not only for special purposes to which I have referred—the supplying of farms and other things specifically mentioned—but it would also really deprive him of the water which he at present enjoys and which is necessary for the enjoyment of his property probably, and therefore special provision was made in respect of the compensation which he should receive in water in consequence of the probable deprivation which would be occasioned by the carrying into effect of these works. Therefore, the arbitrator in making this award and awarding in respect of all the injury which would be sustained by the execution of the works, having

**Appendix.** provided special compensation, if I may say so, or rather, let me say. having provided for the special necessities of various farms and houses referred to more particularly, he awards "In respect of the absolute purchase of the lands, tenements, rights, easements and premises so required to be purchased and taken as aforesaid and of the inheritance thereof in fee simple in possession, free from incumbrances, save only the tenements mentioned in the third schedule, the sum of £17,600." Then he goes on to say, "Subject, nevertheless, to the proviso hereinafter contained, that is to say, provided always and I hereby at the request of the parties and so far only as my powers lawfully enable me so to do, state the following for the opinion of the court, that is to say as part of the compensation for damage which the said John Giffard Riddell, his successors and estate, would sustain by reason of the execution of the works for which the said lands, rights, premises, mentioned in the said agreement are required to be purchased, the said John Giffard Riddell claimed before me a large sum for the water which the company could collect or divert and impound by the said works, and in the above-mentioned sum of £17,600 I have not included any sum for which claim, it being contended by the company that I was precluded from so doing by reason of sub-section 7 of section 9 of the Newcastle and Gateshead Waterworks Act, 1877. Now, therefore, he has stated that the sum he has awarded is in full satisfaction of all easements, rights and privileges which were affected by the execution of the works and taking of certain portions of land, and with regard to that particular section to which the arbitrator refers, namely, sub-section 7 of section 9 of the Act of 1878, he says it was cited and argued before him as amounting to an objection or to a bar to his giving anything beyond the value of the land, streams and privileges which were affected by it in the ordinary way. If I remember right, the suggestion was that by the formation of the land there was a facility for collecting a large quantity of water which might have been stored up by Mr. Riddell if he had chosen, that he might have made a reservoir there or something of that sort and might probably have made it a profitable thing by selling the water which under such circumstances might have been collected. Section 9 of the Act, 1877, provides for the further protection of the said John Giffard Riddell, his heirs, sequels in estate and assigns and so on. The following provisions shall have effect and be binding of the company: 1st. The agreement dated the 14th April, 1877, and so on; then, secondly, the company shall, during every day of twenty-four hours in every year, deliver unto the said stream called Dry Burn, below the Swinburn reservoir, a quantity of water being not less than 200,000 gallons. The said quantity of water shall be delivered at such times during the said twenty-four hours as the company think fit, unless otherwise required by the said John Giffard Riddell or his agent, in which case it shall be delivered during each such day at such time or times (extending over a period of not less than six hours in the whole) as the said John Giffard Riddell shall from time to time by twelve hours previous notice in writing require, such notice to be delivered to or left at the residence of the officer or servant of the company whose dwelling shall be nearest to Swinburn Castle. Then there is a

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provision for making a water gauge for disputes and so on. Then the sixth provision is, the company shall not divert or take any water from the said Swinburn reservoir unless and until they shall have made provision for affording the compensation water by this section required. Clause 7 is—"The said quantity of water shall, subject to the provisions of the agreement of 1876 and the agreement scheduled to and confirmed by this Act, be accepted and taken as full compensation for all water which the company can collect and divert and impound by the works authorised by the Act of 1876, as varied by this Act. That provision is not affected by the subsequent Act; on the contrary it is kept alive, and although by the subsequent Act, that is to say, under the provisions of the subsequent Act they cease to retain the power to make particular reservoirs and substitute therefor another and much larger reservoir, yet I cannot find in any of these provisions that it is intended to compensate for any additional water in respect to any additional lands to be taken, because it appears to me to be under the first Act of Parliament they had the power to impound and collect all the waters that would naturally be collected by the works which they were authorised to make for the purpose of supplying the large town with water. I do not find anything in the subsequent Act at all which affects or intends to affect the compensation water which was to be given and was, in fact, given by virtue of the provisions of the former Act. It seems to me that, therefore, is the only compensation in respect of water he was to receive, and I can see no reason at all either upon the terms of the agreement or the terms of the Act of Parliament for saying he is entitled in addition to the price to be paid for the purchase of land they required for the execution of the works, to any other compensation in respect of water than the compensation provided for by that section. I think, therefore, the arbitrator ought not to have included and was right in excluding it, and therefore I can see no ground for any extension of that compensation or any alteration in the terms under which that compensation was to be delivered, inasmuch as I cannot find within the four corners of the Acts of Parliament or the agreement any stipulation which provides for any additional water than that which is provided by that section.

Now, Mr. Littler, in very general terms, speaking of hardships and making other observations as to surrounding circumstances, as he called them, and so on, pointing our attention to the fact that these clauses or some of them, at all events, were prefaced by a statement that they were to be for the protection of Mr. Riddell, but I think that all that protection has been fully satisfied by the circumstances I have already referred to. Mr. Riddell obtained protection with regard to the supply of water to various farms and to the castle, and various other incidental matters were secured for the protection of Mr. Riddell which he would not have otherwise had. I think that the words "for the protection of Mr. Riddell" are abundantly satisfied by what has been done and what has been required in respect of these matters. As regards the larger question, I am satisfied, upon looking at the Acts of Parliament, which I have done carefully since we last met (I am sorry I have not marked them so as to give the sections more consecutively)

**Appendix.** — that the arbitrator was justified in what he did and could have done nothing else than exclude the sum of £5,000 from the sum to be paid by the company. I think that he was not only justified but that any other course would really have been impossible to pursue on the true construction of the Acts to which he refers. Therefore, on these grounds, I am of opinion that the award is right as it stands and that Mr. Riddell is not entitled to the extra sum of £5,000 which is specified by the arbitrator as being the value of what he claimed in addition to that which has been awarded to him. As I say, I am of opinion that the award as it stands is good and that the proper compensation under the award to be paid to Mr. Riddell is the sum of £17,600 only.

Mr. Justice MANISTY.—I am of the same opinion and I shall add very little to what has been said, seeing that my learned brother has gone into the details sufficiently. But I should like to add one or two observations because it may be that this case may go elsewhere. It is to be noticed that each of these Acts of Parliament was preceded by an agreement, and by the agreement of 1876 special provision was made for the supplying of water to farms, Swinburn Castle and other places, and the recital in that agreement is that the company proposed to take from and use water from the streams, burns and springs flowing through or arising in the estate of the said Mr. Riddell, and the said John Riddell considering that the estate will be prejudiced by the proceedings of the company, had agreed to oppose the bill, but in consideration of the agreement they came to, he withdraws his opposition to that. It is distinctly pointed out that one of the objects is not only to take a large part of the estate, but also the streams and springs flowing through and arising in that estate. Having made these special provisions to which attention has already been called, the opposition is withdrawn, but no provision is made in that agreement for compensation in water, not water compensation but compensation for water either in money or water. And then, when the bill passed into an Act for the protection of Mr. Riddell, in addition to these special provisions, all of which are confirmed, the company were to send a quantity of not less than 200,000 gallons per day down a stream called the Dry Burn, and they were not to divert any water from the reservoir No. 2 until that compensation was made. Then follows this important provision: The said quantity of water shall, subject to the provisions of the agreement scheduled to and confirmed by this Act, be accepted and taken as full compensation for all water which the company can collect or divert and impound by the works authorised by the Act. No doubt by this provision the value of the estate would be enhanced by the value of the water which then was or afterwards might be obtained either from streams or springs, or by means of reservoirs or in any other way, but the moment that enactment was made then all that Mr. Riddell was entitled to was the value of the estate minus the value of the water, because part of the water is to be appropriated to purposes for the benefit of Mr. Riddell, and compensation is to be made for the remainder, and that compensation is to be in water. If he got compensation in money and also in water he would be getting it twice over.

It is somewhat important to bear in mind that that was the state

of things in 1876. In 1877 another agreement was entered into, and it is unnecessary to refer to it further than to say that again no mention is made about water in the agreement, but the legislature having before them the Act of 1876, having their attention called to it and, as Mr. Littler said, this being drawn by a very skilled draughtsman, great care evidently being bestowed upon it, just see what was done in 1878, having had twelve months for consideration. Knowing the effect upon the estate brought about by the Act of 1876, an alteration is made to this effect, that a very much larger reservoir is provided for, and consequently storage capacity for a very much larger quantity of water was provided; but then having confirmed the agreement the company are again required by section 9 to deliver not less than 200,000 gallons a day down the Dry Burn, and we find this in sub-section 7: "The said quantity of water shall"—what? "subject to the provisions of the agreement" (so that they had the agreement of 1876 before them) "scheduled to and confirmed by this Act be accepted and taken as full compensation"—for what? the identical words used before—"for all water which the company can collect or divert and impound by the works authorised by this Act." The works authorised by the Act of 1876 are varied by this Act. It is said you must, having regard to what are called the surrounding circumstances, amongst others the fact that there is to be a much larger reservoir and a great deal more water impounded than before, come to the conclusion that it was the intention of the parties that this should only refer to the 200,000 gallons a day to be sent down the Dry Burn for the supply of the Dry Burn. The words are, "All water which the company can collect or divert and impound by the works authorised by this Act," the works authorised by the Act of 1876 being varied by the Act of 1877. What is the claim which Mr. Riddell is now putting forward and which is the subject of the special case now under consideration? He is now claiming compensation for what? For the water which the company could collect or divert and impound by the said works. The Act of Parliament says that the 200,000 gallons a day is to be compensation for the very thing, in words, for which he is now claiming. He would, however, get compensation if his contention were held to be right, in my opinion, twice over. The very fact that these agreements and this Act of Parliament, which I consider is in the nature of a contract, and that these clauses were the subject of great consideration by a skilled draughtsman, leads me to the conclusion that it was intentional instead of leading me to the conclusion that we ought to give effect to the surrounding circumstances and draw an inference for which there seems, according to my view, no foundation. The inference I draw is that it was a carefully considered Act, that they have used language which is unambiguous and which in terms, words and spirit, includes the very claim for which Mr. Riddell is now seeking compensation. Therefore, I come to the same conclusion as that arrived at by my brother MELLOR that the award is right and that his claim cannot be entertained.

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Mr. Webster.—Then your lordships' judgment will be that the award stands for £17,600.

Mr. Justice MELLOR.—Yes.

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Mr. Webster.—With regard to costs, probably your lordship is aware that under the Lands Clauses Act all the costs of and incident to the arbitration have to be paid by the promoters. By this agreement of reference it is agreed that all the costs of this agreement, as well as all the costs of the arbitration incident thereto, shall be borne by the company. Upon the award it is recited, which is the fact, that this case was stated at the request of the company as well as the plaintiff; therefore these will be costs in the arbitration.

Mr. Justice MELLOR.—Yes, I think so.

Mr. Justice MANISTY.—They would be anyhow; but if it is necessary, I suppose we shall say so.

Mr. Justice MELLOR.—You are applying on behalf of Mr. Riddell.

Mr. Webster.—Yes.

Mr. Smith.—I cannot dispute it, my lord.

Mr. Justice MANISTY.—No, it seems to be the case; these will be costs in the arbitration.

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IN THE MATTER OF AN ARBITRATION BETWEEN JOHN GIFFARD  
RIDDELL

AND

THE NEWCASTLE AND GATESHEAD WATER COMPANY.

June 13th, 1879.

*Judgment.*

BRAMWELL, L.J.—Really, speaking sincerely, the only distrust I feel about this case is that I cannot get myself to entertain a doubt about it, but there are some points in it upon which I cannot say the award to my mind is perfectly clear and intelligible. The arbitrator says, “I award, settle and determine that the amount of the purchase money and compensation to be paid by the said company for and in respect of the absolute purchase of the lands, tenements, rights, easements and premises so required to be purchased”—and one may observe that that certainly includes waters, because there is a reference to the first schedule in his award, and the first schedule says that the parcels are “All that piece of land,” and so forth, “together with all waters, ways, paths, passages,” etc.—he says, “I award the purchase money for that.” Then he goes on, to my mind most clearly, to say a claim has been made in respect of the damage that can be done to Mr. Riddell’s estate and his successors’ by the power of the company; that means as to his other lands, not to his lands to be taken and paid for, because it does not matter to him what damage is done to them, but for the damage in respect of the remaining lands by the powers of the company to direct and alter the natural course of the water. He says, as to that, “It has been objected that it has been bargained away. If it has not I give £5,000; if it has I do not give it.” That is the award to my mind, and as I understand, Mr. Webster says that if that is the award on the face of it, if that is what the award means he cannot object. He

says, "I contend that the meaning of the award is this: I give too much money for compensation, and I would give £5,000 more for compensation if I could, but the company say that Mr. Riddell's rights have been taken away, and the £5,000 more in respect of which I am asked to give compensation is this, that the land has a special value in respect of its fitness for a reservoir, and I would give £5,000 for that if it were not that that is bargained away by the section."

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Now, I am very clearly of opinion that if he did act upon that notion he acted upon an erroneous notion, because the land had a peculiar value on account of its fitness for a reservoir, or for building land, or for a skating rink, or for tea gardens, or what not; those were all things the value of which must have been taken into consideration; and when one knows that the arbitrator was Mr. Clutton, it is to my mind impossible to suppose that he would not have taken that into account. It certainly would be a most remarkable thing that he should have made a double mistake of not taking into account that which he ought to have taken into account, and stated his award in such a way that the first mistake he made was concealed in the other.

In my opinion the judgment of the court below was perfectly right, and I cannot think that any injustice has been done to Mr. Riddell in the matter. Of course, with respect to Mr. Webster's last application, if there was any obscurity on the face of the award we might send it back to have it cleared up, but to my mind there is absolutely none. I think before we send an award back we ought to have strong reasons given, and if Mr. Clutton had come forward and made an affidavit that he had made the double mistake there might be reason to entertain the application; but I am satisfied that the award was right (it is a question of what the arbitrator ought to say), and that the judgment of the court below must be affirmed.

BRETT, L.J.—It seems to me the award is clear; in the first part of the award he gives compensation in respect of the absolute purchase of the lands and compensation for the damage that may be sustained by reason of the execution of the works. It seems to me clear that that would give the value of the land taking into account its position and all its capabilities for any particular purpose. Then, upon the face of the award, it seems to me that somebody suggested that besides that ordinary value—the land valued in the ordinary way with all its capabilities—Mr. Riddell was entitled to something more, not as adding value to the land, but that he was entitled to compensation for water as water which the company could collect or divert and impound; that means which the company could now collect or divert and impound, and which, if the company had not done, he could have collected, or diverted and impounded, and that he claims in addition to the land with all its capabilities. I think the answer of my brother MANISTY is perfect, which is, "If you claim for water in that way, in addition to the value of the land, as water which the company could collect or divert and impound, you are claiming that which by the Act of Parliament in terms you are already paid for, for that says that

**Appendix.** the 200,000 gallons of water per day is to be compensation for all water which the company can collect or divert and impound"—the very thing which was claimed from the arbitrator in addition to the value of the land. I can see no answer to that judgment of my brother MANISTY, and I think, therefore, that this appeal is wrong.

COTTON, L.J.—The question which we have to consider is whether the landowner is entitled to a sum of £5,000 in addition to the £17,600 which has been given him by the award. Now he was held by the court below not entitled to the £5,000, and the arbitrator doubted about it in consequence of a section of the Act of Parliament, that is to say, sub-section (7) of the 9th section of the Act, 1877. As I understand that clause (I need not read it), it in no way deprives him of any right which he would have to enhance the purchase money to be given to him for land in consequence of any of the capabilities or circumstances which enhance the value of that land as land, but in my own opinion it did deprive him of any claim for compensation in consequence of damage alleged to be done by the execution of the works of the water company to the remainder of his estate by diverting or depriving him of water which otherwise the estate would have had the benefit of, and what we have to consider on the face of the award is, whether or not the award shows that this £5,000 was a sum which would have been given by the arbitrator unless he had found himself bound to exclude in estimating the value of the land, one of those circumstances which under ordinary circumstances, but for the Act of Parliament, it would have taken into consideration in estimating the value of the land so taken, or whether he has treated that £5,000 as a sum which was claimed in respect of damage to the estate in consequence of the execution of the works of the company, and by the diversion of water from the estate.

We must look only to the award and to the face of the award ; we cannot regard anything which passed, even if there was anything which passed, before the arbitrator which might lead to a different conclusion from that which appears on the face of the award. Now, looking at the face of the award, I cannot possibly come to the conclusion that the arbitrator has not taken into consideration, in estimating the sum of £17,600, all the capabilities of the land, including any value arising from the fact of its being well watered land, or land available for the purpose of making a reservoir or anything else connected with traffic in water, and I also must come to the conclusion on the face of the award that the £5,000 was the sum which he rejected as being a sum paid for damage to the estate in consequence of the diversion of the water by the execution of the works of the company. Now, if you look at it, you will find a recital in the reference to him that he is to estimate what sum of money should be paid, not only for the absolute purchase of the lands and tenements, rights, easements and premises so required to be purchased and taken, but also by way of compensation for any damage which might be sustained by reason of the execution of the works for which the said lands, rights and premises were so required. Now that of necessity must be damage to the remainder of the estate, because there could be no damage to the land taken by

reason of the execution of the works that would be the property of the company when the works were executed, and damage, therefore, necessarily must be the damage to the remainder of the estate and to the owners of the estate. **Appendix**

Then we come to the award, and in the award the arbitrator gives the sum of £17,600 in respect of the absolute purchase of the lands, tenements, rights, easements and premises so required to be purchased, and as compensation for the damage which may be sustained by reason of the execution of the works, subject to this, that as part of the compensation for damage which the said John Giffard Riddell and his successors in estate would sustain by reason of the execution of the works for which the said lands, rights and premises are required, he claims a large sum for water which the company could collect or divert and impound by the said works, and he doubts whether that is not concluded by the section of the Act of Parliament. By the very terms of his award he deals with one part of it, with the value of the land; and as far as the award shows, and as we must conclude, has taken into consideration all the elements of value. He also deals there with the claim made for damage in consequence of the execution of the works, all included in £17,600, with the exception of a certain particular claim made in respect of damage which would be sustained by the execution of the works. In my opinion, therefore, that award shows on the face of it that the claim in respect of the £5,000 which was not estimated by him, was not a claim in respect of an element of value in the land, but a claim in respect of damage which it was said would be suffered by the estate in consequence of the execution of the works, and in consequence of the company diverting certain water. That claim was concluded, in my opinion, by the section of the Act of Parliament, although an element of value in the land not in any way to be taken into consideration by him. It was, however, said that he had excluded any water element value by the terms under which he mentioned what it was in respect of the purchase of which he gave the £17,600. It was said that it was referred to him to estimate the value of the land, water, and premises, and various other things mentioned in the schedule, and that here he had omitted water; but in the award he is merely following the words of description which are to be found in the recital of the reference to him, because (and I have read it) it was referred to him to settle and determine what sum should be paid for the absolute purchase of lands, tenements, rights, easements and premises, and these are the exact words which he uses in that part of the award which fixes the sum of £17,600 as to be paid for those things. He does not give water in the awarding part any more than he gives it in the recital, but there being a long list of general words in the first schedule to the award which includes not only water but hedges and fences and various other things in the award both in the recital and in the awarding part, and there is a short description the same in both cases, and the reference to him was clearly to ascertain the value of all that there was in the schedule. The description in the first place, and in the latter, must be taken to include water, and that is the only description there is to be found in the words of the schedule.

**Appendix.** — In my opinion this claim on the award must be taken as a claim for damage—consequential damage—covered by the clause in the Act of Parliament, as not being a sum in respect of an element of value which the arbitrator thought he was bound to exclude by that Act of Parliament.

Mr. Herschell.—I ask your lordship that the appellant should pay the company the costs of this appeal. In this case the costs in the court below, although we were successful, we had to pay because it is part of the proceeding for the assessment of damages—your lordship has so held, I am told, in a recent case, so that I ask for costs.

Mr. A. L. Smith.—That was decided in the case of *Easton v. The Blyth and Tyne Rail. Co.*

Mr. Webster.—That was not under the Lands Clauses Act—that was an action referred. This is a case stated by the request of the company.

Mr. Smith.—By both parties.

Mr. Webster.—It is stated by the request of the company. They are to pay the costs of and incidental to the special case, and I submit to your lordship they ought to pay the costs.

Mr. Herschell.—I submit that your lordship ought not to make any order against us for costs.

BRAMWELL, L.J.—I think we held the other day that we have power and acted upon it.

Mr. Webster.—In *Bidder v. The North Staffordshire Rail. Co.*, which was under the Lands Clauses Act, your lordship declined to make any order as to costs.

Mr. Herschell.—They reversed the decision of the court below.

Mr. Webster.—That is quite true. That was a request stated by Mr. Cave under the Lands Clauses Act. My friend, Mr. A. L. Smith, will recollect that the case of *Easton v. The Blyth and Tyne Rail. Co.* was a case stated in an action referred.

COTTON, L.J.—It depends on the Act of Parliament.

Mr. Herschell.—The only words in the Act of Parliament are: “All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators shall be borne by the promoters of the undertaking unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking.” That would be inapplicable to appealing upon a case of this sort.

BRAMWELL, L.J.—It is a curious application: somehow or another an appeal has been held possible in cases of this description under peculiar circumstances.

Mr. Webster.—Your lordship decided it in *Bidder v. The North Staffordshire Rail. Co.* We took the objection.

BRAMWELL, L.J.—Yes, but somebody had decided beforehand.

Mr. Webster.—I do not know that. We did take the objection in that case.

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Mr. Herschell.—An appeal becomes possible under the Judicature Act. It is only under that Act that it becomes possible because it is an appeal from a judgment, and then this court on an appeal from any judgment can deal with the costs. They have ceased to be part of costs of the arbitrator. I submit your lordships are sitting as a court of appeal with reference to judgment of the court below, and you have power to deal with that judgment and affirm it or reverse it, and deal with the costs of it.

BRAMWELL, L.J.—If Mr. Webster is right he ought to have the costs of this appeal.

Mr. Herschell.—Yes, but they may take us to the House of Lords and make us pay the whole of the costs.

COTTON, L.J.—Is it not a question for the arbitrator as to what are the proper costs? Do we deal with it? Is it not for the arbitrator to say what are the costs of the arbitration? Has it ever been considered by the Court of Appeal in Chancery (and I say Chancery advisedly) when there are appeals between railway companies and landowners where money has been paid into court under the Lands Clauses Act?

Mr. Webster.—I do not know of any case.

BRAMWELL, L.J.—What are the words of the Act?

Mr. Herschell.—The words of the Act are: "All the costs of any such arbitration and incident thereto to be settled by the arbitrator shall be borne by the promoter of the undertaking."

Mr. Webster.—And by this agreement the company agree that they will pay all the costs of and incident to the arbitration.

BRAMWELL, L.J.—This appeal is not an incident.

Mr. Webster.—This company asked for a special case to be stated.

Mr. Herschell.—But we did not ask you to come here and appeal from the judgment.

BRAMWELL, L.J.—We will order that you shall have your costs, Mr. Herschell, if you like to give Mr. Webster another string to his bow if he feels inclined to draw it.

STATUTES RELATING TO COMPENSATION PASSED  
PRIOR TO THE LANDS CLAUSES ACT, 1845.

THE ADMIRALTY (SIGNAL STATIONS) ACT, 1815.

(55 GEO. 3, c. 128.)

*An Act to enable His Majesty to acquire Ground necessary for Signal and  
Telegraph Stations.* [29th June 1815.]

Admiralty  
may authorise  
persons to  
survey and  
mark out  
lands for  
signal or  
telegraph  
stations.

WHEREAS it is expedient that His Majesty should be enabled from time to time to procure and take, or purchase, either for a time or term of years, or in fee, as occasion shall require, all such lands or hereditaments as are, shall, or may be wanted for the purposes of signal or telegraph stations, and of making, preserving, and maintaining a free and uninterrupted communication between the respective signals or telegraphs erected or to be erected thereon, and of preventing and removing any obstructions thereto, either by buildings, trees, or in any other manner, together also with all necessary ways unto and from the same : Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for the Lord High Admiral, or any three or more of the commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland for the time being, from time to time, by any writing under their hands, to authorise any person or persons to survey and mark out any lands or hereditaments which are, shall, or may be wanted for the purposes aforesaid, or any or either of them, and to treat and agree with the owner or owners thereof, or any person or persons interested therein, either for the absolute purchase thereof for the public service or for the possession thereof, for such time or term of years as the public service shall require.

For other powers of the Admiralty to take land, see the Admiralty Lands and Works Act, 1864, *ante*, p. 430, and the Coast Guard Service Act, 1856, *ante*, p. 399, and the Naval Works Act, 1895, *ante*, p. 609.

Obstructions  
to be  
removed.

2. In case any obstruction should arise, grow, or be occasioned, or should be intended to be made between any two signal or telegraph stations, so as to impede the free communication between the said stations, it shall be lawful for the Admiralty to agree for the removal or prevention of such obstructions in the same manner and under the same powers and provisions, as are hereinafter provided for the acquisition of the lands or grounds necessary for the erection of the said signal or telegraph stations.

Bodies  
politic, etc.,  
may contract  
for the sale  
of premises.

3. It shall be lawful for all bodies politic or corporate, ecclesiastical or civil, and all feoffees or trustees for charitable or other public purposes, and for all tenants for life and tenants in tail, and for the husbands, guardians, trustees, committees, curators, or attorneys of such of the owners or proprietors of or persons interested in any such lands or hereditaments required for such public service as shall be females covert, infants, lunatics, idiots, or persons beyond the seas, or otherwise incapable of acting for

themselves, to contract and agree with such person or persons authorised as aforesaid, either for the absolute sale of such lands or hereditaments, or for the grant of any lease either for any term of years certain therein, or for such periods as the public service shall require, and to convey, surrender, demise, or grant the same unto the Admiralty, in trust for his Majesty, accordingly; and all such contracts, sales, conveyances, surrenders, leases, and agreements shall be valid and effectual in law to all intents and purposes whatsoever.

**Appendix.**

4. In case any such bodies or other persons hereby authorised to contract on behalf of themselves or others as aforesaid, or any other person or persons interested in any such lands or hereditaments which shall be so marked out and surveyed for the public service, shall, for the space of fourteen days next after notice in writing, subscribed by such person or persons authorised as aforesaid, shall have been given to the principal officer or officers of any such body, or to such other persons hereby authorised to contract on behalf of others or interested themselves as aforesaid, or left at his, her, or their usual place of abode, refuse or decline to treat or agree or by reason of absence shall be prevented from treating or agreeing with such person or persons authorised as aforesaid, or shall refuse to accept such sum of money as shall be offered by such person or persons as the consideration for the absolute purchase of such lands and hereditaments, or such annual rent or sum as shall be offered for the hire thereof, either for a time certain or for such period as the public service may require, then and in such case it shall be lawful for such person or persons so authorised as aforesaid to require two or more justices of the peace or three or more deputy lieutenants (one of whom shall be a justice of the peace) or two or more deputy governors for the county, riding, city, or place where such lands or hereditaments shall be, to put his Majesty's officers into immediate possession of such lands or hereditaments, which such justices or deputy lieutenants or deputy governors are hereby required to do, and shall for that purpose issue their warrant under their hands and seals commanding possession to be so delivered, and shall also issue their warrants to the sheriffs of the county, riding, city, or place wherein such lands or hereditaments shall be situate, to summon a jury; and every such sheriff is hereby authorised and required to summon and return a jury properly qualified of the number of twenty-four, and in the manner required by the laws of England, Ireland, and Scotland respectively, who shall meet at some convenient time and place to be mentioned in such summons; out of whom a jury of twelve shall be drawn in such manner as juries for the trial of issues joined in his Majesty's Courts at Westminster and Dublin are drawn by law in England and Ireland respectively, and in such manner as juries are drawn by law for the trial of offences in Scotland; and in case a sufficient number shall not appear, the said sheriff shall choose others of the bystanders, or that can speedily be procured, being qualified as aforesaid; and the said jurymen may be challenged by the parties on either side, but not the array; and the said justices, deputy lieutenants, or governors respectively may summon witnesses, and adjourn any such meeting if jurymen or witnesses do not attend; and the jury, on hearing any witnesses and evidence that may be produced, shall on their oaths (which oaths, as also the oaths of such witnesses, the said justices, deputy lieutenants, or governors respectively, are hereby empowered and required to administer) find the compensation to be paid, either for the absolute purchase of such lands or hereditaments, or for the possession or use thereof, as the case may be.

5. Provided always, that if the Lord High Admiral or the commissioners for executing the office of Lord High Admiral aforesaid, or any person Appeal to the Court of Exchequer, if

**Appendix.**

in England  
or Ireland,  
and to the  
Court of  
Session if in  
Scotland.

interested therein, shall be dissatisfied with the verdict of any such jury, it shall be lawful for them or their attorneys in England and Ireland to apply to the Court of Exchequer at Westminster or Dublin respectively in the term next, and in Scotland to apply within fourteen days after the finding any such verdict to the Court of Session in Scotland in time of session, or Lord Ordinary on the Bills in time of vacation, and to suggest to the said courts or Lord Ordinary respectively, that they have reason to be dissatisfied with such verdict, and forthwith give notice thereof to the said Lord High Admiral or commissioners or party (as the case may be); and thereupon in England and Ireland the proceedings that shall have been had and the verdict of such jury shall be returned into the said Courts of Exchequer respectively; and if it shall appear to the said courts to be proper, a suggestion shall be entered on such proceedings as aforesaid, and a writ shall thereupon by rule of such court or order of any judge of such court be directed to the sheriff of the county where such lands or hereditaments shall lie, or, if the same shall lie in two counties, to the sheriff of either of such counties, to summon either a common or special jury, according to the application that shall have been made on that behalf, and as the court or as such judge shall allow, and who shall respectively be qualified according to law to appear before the said justice or justices of assize or nisi prius of that county at the next assizes, if the same shall not happen sooner than twenty-one days after such suggestion, otherwise at the next succeeding assizes; and the compensation to be paid either for the absolute purchase or for the possession or use of such lands or hereditaments, as the case shall be, shall at such assizes be ascertained by such jury, in like manner as any damages may be enquired of upon any inquisition or enquiry of damages by any jury before any judge of assize or nisi prius, and the verdict of such jury shall be returned to the said Court of Exchequer, and shall be final and conclusive; and in Scotland, if it shall appear proper to the said Court of Session or Lord Ordinary upon such application so to do, the said court or Lord Ordinary shall order and direct the sheriff of the county where such lands or hereditaments shall lie, or, if the same shall lie in two counties, the sheriff of either of such counties, to summon another jury in the manner in which juries are summoned in Scotland, properly qualified according to law, to appear before the Lords or Lord of Justiciary at the next circuit, if the same shall not happen sooner than twenty-one days after such application, otherwise at the next succeeding circuit; and the compensation as aforesaid for the lands or hereditaments (as the case may be) shall at such circuit be ascertained by a jury drawn from the jury summoned as aforesaid in such manner as juries are drawn in Scotland, under the direction of the said Lords or Lord of Justiciary as aforesaid; and the verdict of such last-mentioned juries shall be final and conclusive, without being subject to review or challenge of any kind, unless the court that shall have allowed such enquiry shall think fit, on any application made within four days after the commencement of the succeeding term or session, if in Scotland, to order any new trial in relation thereto.

Jury in  
ascertaining  
the compen-  
sation for  
premises  
shall settle  
the propor-  
tion to be  
paid lessees,  
etc.

6. Provided always, that it shall be lawful for any jury impanelled before any justice of the peace or magistrate, or deputy lieutenant or deputy governor, or before any judge of assize or nisi prius, to ascertain the compensation to be paid for any lands or hereditaments under this Act, and they are hereby required to ascertain and settle the proportion to be paid out of such compensation to any person or persons having any interest as lessees or tenants at will or otherwise in any such lands or hereditaments, and the proportion to be paid out of such compensation shall be returned on the verdict: Provided also, that where any such enquiry before any judge of assize or nisi prius, or Lords or Lord of Justiciary, shall be had on the application of any such lessee or tenant at will, or other person having any inferior

interest in any such lands or hereditaments, who may have been dissatisfied with the proportion of compensation settled by the jury to be paid in respect of such interest, it shall not be lawful for the jury in any such case to alter the amount of the entire compensation awarded by any former verdict to be paid for such lands or hereditaments, but only the proportion thereof to be paid to the person or persons having separate interest therein ; and it shall not be lawful for any jury on any enquiry had before any judge of assize or nisi prius or Lords or Lord of Justiciary, as to any such compensation, on the application of the said Lord High Admiral or commissioners for executing the office of Lord High Admiral aforesaid, in any case in which the whole compensation awarded by the former jury, to alter the proportion that shall have been settled by any such former jury as to any separate interest in any such lands or hereditaments.

# Appendix.

7. Provided also, that it shall be lawful for the court or judge or Lord Ordinary making any such rule or order to require that the party on whose application the same shall be made shall give such security as shall to such court, judge, or Lord Ordinary seem proper for payment of costs, under such circumstances as shall be specified in any rule or order made for that purpose.

Courts to require security to be given for costs.

8. In all cases where any lands or hereditaments shall have been taken under the provisions of this Act for any term of years or for such period only as the public service shall require, it shall be lawful for the Lord High Admiral, or commissioners for executing the office of Lord High Admiral aforesaid, or any other person or persons so authorised as aforesaid, at any time before the possession of any lands or hereditaments which shall have been taken for the purposes aforesaid shall be delivered up to the owner or owners thereof, or other person or persons acting on his, her, or their behalf, to take down and remove all such buildings or other erections which shall or may have been built or erected thereon for the public service, and to carry away the materials thereof, making such compensation to the owner or owners of such lands or hereditaments, or other person or persons acting on his, her, or their behalf, for the damage or injury which may have been done thereto, or to the soil thereof, by the erection of any such buildings, or removing and carrying away the same, or otherwise in consequence of the same having been occupied for the public service, as the said Lord High Admiral or the commissioners for executing the office of Lord High Admiral, or such other person or persons authorised as aforesaid shall think reasonable, and as shall be agreed upon in that behalf ; and if such owner or owners or other person or persons acting on his, her, or their behalf shall not be willing to accept the compensation so offered, it shall be lawful for the said Lord High Admiral or commissioners for executing the office of Lord High Admiral aforesaid, or other person or persons so authorised as aforesaid, to apply to and require two justices of the peace of the county, riding, stewartry, city, or place, to settle and ascertain the compensation which ought to be made for such damage or injury as aforesaid ; and such justices shall settle and ascertain the same accordingly, and shall grant a certificate thereof ; and the amount of such compensation so settled and ascertained and certified shall forthwith be paid by the Treasurer of his Majesty's Navy for the time being to the person or persons entitled thereto : Provided always, that nothing in this Act contained shall extend or be construed to extend to alter, prejudice, or affect any agreement which hath been or shall or may be entered into by any such person or persons authorised as aforesaid with any owner or owners of any such lands or hereditaments, or other person or persons acting on his, her, or their behalf, in relation to any such buildings or erections, but every such agreement shall remain valid and effectual in like manner, as if this Act had not been passed.

In cases where lands are taken for any term of years, all erections for the public service shall be removed, on delivering up the lands to the owners.

Saving as to special agreements.

**Appendix.**

Purchase money belonging to incapacitated persons, etc., to be paid by the treasurer of the navy to the deputy remembrancer of the Exchequer for their use.

Money to be paid into the bank.

Barons of the Exchequer, etc., on petition of the parties interested to order the application of the money.

On death or removal of deputy remembrancer, stocks and securities shall vest in successor.

9. In all cases where any money shall have been or shall be agreed or shall have been or shall be found by the verdict of any jury to be paid or given either for the use or for the absolute purchase of any lands or hereditaments taken by virtue of this Act, belonging to any person or persons under any disability or incapacity, or not having the absolute interest therein, the same shall be paid by the Treasurer of his Majesty's Navy for the time being into the hands of the Deputy of the King's Remembrancer of his Majesty's Court of Exchequer at Westminster, Edinburgh, or Dublin respectively for the time being, for the use and benefit of such person or persons; who is hereby authorised and required to receive or accept and to give a discharge for the same, and upon the acceptance or receipt thereof to sign a certificate to the barons or judges of the said Courts of Exchequer respectively under his hand, purporting and signifying that such money or other consideration was received or accepted by and paid to him in pursuance of this Act for the use and benefit of such person or persons who shall be named and described in such certificate; and the said certificate shall be filed or deposited in the said Court of Exchequer at Westminster, Edinburgh, or Dublin respectively, and a true copy thereof signed by the Deputy Remembrancer of such court shall and may be read and allowed as evidence for the purposes hereinafter mentioned; and the said Deputy Remembrancer is hereby required upon receipt of any such sum or sums of money as aforesaid, to pay the same into the Bank of England, or Bank of Scotland or Royal Bank of Scotland, or Bank of Ireland, as the case may require: and immediately upon the filing or depositing of such certificate the said lands or hereditaments shall be and become vested in or to the use of his Majesty.

10. The barons or judges of his Majesty's Court of Exchequer at Westminster, Edinburgh, or Dublin, of the degree of the coif, for the time being respectively, or any two or more of them, shall be and they are hereby authorised and empowered in a summary way upon motion or by petition for and on behalf of any person or persons interested in or entitled to the benefit of the money so paid to and received by the Deputy Remembrancer or the interest or produce thereof, and upon reading the certificate directed to be signed by the said Deputy Remembrancer concerning the same as aforesaid, and receiving such further satisfaction as they shall think necessary, to make and pronounce such orders and directions for paying the said money or any part of the same, or for placing out such part thereof as shall be principal in the public funds or upon Government or real securities, and for payment of the dividends or interest thereof, or any part thereof, to the respective persons entitled to receive the same, or for laying out the principal or any part thereof in the purchase of other lands or hereditaments to be conveyed and settled to, for, and upon the same uses, trusts, intents, and purposes, as the said lands and hereditaments so taken stood settled at the time of the payment of such money as aforesaid, as near as the same can be done, or otherwise, concerning the disposing of the said money or any part thereof, and the interest of the same or any part thereof, for the benefit of the person or persons entitled to and interested in the same respectively, or for appointing any person or persons to be trustee or trustees for all or any of such purposes, as the said court shall think just and reasonable.

11. Upon the death or removal of any such Deputy Remembrancer, all stocks and securities vested in him by virtue of this Act shall vest in the succeeding Deputy Remembrancer for the purposes hereinbefore mentioned without any assignment or transfer; and all moneys paid into the said banks respectively in pursuance of this Act, or remaining in the

hands of any Deputy Remembrancer at his death or removal, and not vested in the funds or placed out on securities as aforesaid, shall be paid over to the succeeding Deputy Remembrancer for the time being. **Appendix.**

12. If in any case the King's Remembrancer shall execute the said office in person, then and in such case the several trusts, powers, and authorities, by this Act vested in the said Deputy Remembrancer and his successors, shall, during such time as no Deputy Remembrancer shall be appointed, be vested in and be executed by the said King's Remembrancer for the time being. Where there is no deputy, powers shall vest in the King's remembrancer.

NOTE.—The above Act is printed as in the Revised Statutes.

## THE CHURCH BUILDING ACT, 1818.

(58 GEO. 3, c. 45.)

*An Act for building and promoting the building of additional churches in populous parishes.* [30th May 1818.]

\* \* \* \* \*

By this Act certain Commissioners were appointed to inquire as to where new churches were required, and when necessary to provide them; a sum of £1,000,000 was voted to them to employ on this purpose. By 19 & 20 Vict. c. 55, their powers were transferred to the Ecclesiastical Commissioners. They had also power to assist parishes to build churches, and to lend money on the security of the church rates. These rates were, however, abolished by the Compulsory Church Rate Abolition Act, 1860 (31 & 32 Vict. c. 109). Power was given to them to purchase sites compulsorily for new churches, and persons under disability were enabled to sell. As the money has been expended and the churches provided in respect of which they were appointed, many of these powers may be regarded as obsolete. The power given by s. 52 to enable the commissioners to acquire a site for such parishes as are prepared to defray the expense would still seem to exist. This section is as follows:

52. In every case in which any parish or extra-parochial place is or shall be empowered by any Act or Acts of Parliament to build any church or chapel, or enlarge any existing church or chapel, and also in every case in which any parish or extra-parochial place shall be desirous of building any church or chapel, or enlarging any existing church or chapel, and defraying the expense thereof without any aid from the commissioners in that behalf, and are not able to procure a fit and proper site for such new church or chapel, or for the enlarging such existing church or chapel, by reason of the inability of any person or persons, body or bodies interested in such site or any part thereof, to convey or make a good title to the same, freed and discharged from all incumbrances, or shall be unwilling to treat for the sale thereof, or cannot agree for such sale and purchase, then and in every such case it shall be lawful for the said commissioners, and they are hereby authorised and empowered, if, upon application made for that purpose, and upon a statement of all the circumstances of the case, they shall think it proper and expedient, to proceed under the provisions of this Act to procure such site; and the expense of procuring such site shall be chargeable and charged upon the parish or extra-parochial place making such application, in like manner as in cases of money advanced for sites under this Act; and all the powers, authorities, provisions, and regulations and clauses in this Act contained in relation to procuring sites for churches to be built under the provisions thereof, shall extend and apply to the procuring and taking of Where a parish desires to procure a site for a church, but the owner is under disability or unwilling to treat, commissioners may procure the same under this Act.

**Appendix.** such sites, as fully in any respect as if such churches or chapels were built under the provisions of this Act.

The sections as to acquiring sites are ss. 34, 36, 38—54. They contain provisions corresponding to the jury clauses of the Lands Clauses Act, 1845, and the money is to be paid into the bank in cases of disability or failure to make a title. The powers of sale given to persons under disability have also been extended by subsequent Acts; see, for example, 3 Geo. 4, c. 72; 5 Geo. 4, c. 103; 1 & 2 Vict. c. 107; 8 & 9 Vict. c. 70; 19 & 20 Vict. c. 104; 36 & 37 Vict. c. 50; 45 & 46 Vict. c. 21. As to purchasing common land, see the restriction in s. 22 of Sched. L of the Commons Act, 1899, *ante*, p. 627.

As the powers of compulsory purchase have been exercised rarely, if ever, during recent years it has not been thought necessary to set out these sections, or to deal with the matter more fully. On this subject the reader is referred to Phillimore's Ecclesiastical Law, p. 2141, and to Trower's Church Building Laws.

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### THE SEWERS ACT, 1833.

(3 & 4 WILL. 4, C. 22.)

*An Act to amend the Laws relating to Sewers.*

[28th June 1833.]

\* \* \* \* \*

By this Act, Commissioners of Sewers are empowered to purchase and take land for the purpose of altering, repairing, and widening existing drainage works. Powers for the same purpose and for making new works are also given by the Land Drainage Act, 1861; but the powers given by this Act are not thereby repealed, but may still be put in force. See the notes to the Land Drainage Act, 1861, *ante*, p. 405.

The following are the sections conferring the powers as to the taking and purchase of land:

Commis-  
sioners autho-  
rised to con-  
tract for the  
purchase of  
lands, etc.

24. It shall be lawful for any Court of Commissioners of Sewers to treat, contract, and agree with the owners of and persons interested in any messuages, lands, tenements, hereditaments, and premises, with their appurtenances, for the purchase thereof or of any part thereof, for the purpose of widening, deepening, strengthening, maintaining, repairing, and amending any rivers, streams, watercourses, walls, banks, and other works, aids, and defences within the jurisdiction of Commissioners of Sewers, and for the loss or damage which such owners or persons may sustain thereby respectively; and it shall be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees in trust, executors, administrators, and all other persons whomsoever, not only for or on behalf of themselves, their heirs and successors, but also for or on behalf of the person entitled in reversion, remainder, or expectancy after them, and for or on behalf of their cestui que trusts, whether females covert, infants, or issue unborn, lunatics, idiots, or other person whomsoever, and to and for all females covert who are or shall be seised of or interested in their own right, and to and for every person whomsoever who is or shall be possessed of or interested in any such lands, tenements, hereditaments, or premises, or who shall sustain any damage as aforesaid, to contract with the said commissioners for the sale thereof respectively, or for the satisfaction to be made for the same or for such damage as aforesaid, and by conveyance to convey unto the said commissioners all or any of such messuages, lands, tenements, hereditaments, or premises, or any part thereof, for the purposes aforesaid, in manner herein-after mentioned; and all contracts, sales, and conveyances which shall be so made shall be good, valid, and effectual, to all intents and purposes, without fine or recovery, and shall be a complete bar to all estates tail, and other estates, rights, titles, trusts, and interests whatsoever, any law, statute, usage,

custom, or other matter to the contrary notwithstanding ; and all such bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees, committees, executors, administrators, and all other persons, shall be and are hereby indemnified for what they or any of them shall do by virtue or in pursuance of this Act.

**Appendix.**

25. All such conveyances of any lands, tenements, or hereditaments to be purchased by the said Commissioners of Sewers shall be expressed in the following or some similar form of words, as the circumstances of the case may require :

Form of conveyance to commissioners.

" I, \_\_\_\_\_, of \_\_\_\_\_, in consideration of the sum of \_\_\_\_\_, to me paid by six or more of the Commissioners of Sewers acting in and for several limits [*here describe the limits as set forth in the Commission of Sewers*], do hereby grant and release to the Commissioners of Sewers acting in and for the said limits all [*describing the premises to be conveyed*], and all my right, title, and interest in and to the same and every part thereof, to hold to the said commissioners, their successors and assigns for ever, by virtue of the several Acts and laws now in force concerning sewers. In witness whereof I have hereto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_."

26. If any such body politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees or feoffees, committees, executors, administrators, or any other person interested in any such lands, tenements, hereditaments, or premises, or sustaining any damage as aforesaid, upon notice to him or them given, or left in writing at the dwelling-house or place of abode of such person, or of the principal officer of any such bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, or at the house of the tenant in possession of any such lands, tenements, hereditaments, or premises, shall, for the space of thirty days next after such notice given or left as aforesaid, neglect or refuse to treat, or shall not agree in the premises, or by reason of absence shall be prevented from treating, then and in every such case the said Commissioners of Sewers, or any six or more of them, are hereby empowered from time to time to issue out their warrant or warrants under their hands and seals to the sheriff, bailiff, or other returning officer of the county or place wherein the matter in question shall lie, or if such sheriff, bailiff, or other returning officer shall be immediately interested in such matter, then to one of the coroners of such county or place, commanding such sheriff, bailiff, or other returning officer, or coroner, to impanel, summon, and return a jury ; and the said sheriff, bailiff, or other returning officer, or coroner, is hereby required accordingly to impanel, summon, and return twenty-four men, qualified according to the laws of this realm to be returned for trials of issues joined in his Majesty's courts at Westminster ; and the persons so to be impanelled, summoned, and returned are hereby required to come and appear before the justices of the peace for the county or place in which such lands, tenements, hereditaments, or premises shall lie, or the matter in question or dispute shall arise, at some court of general or quarter sessions of the peace to be holden in and for the same county or place, or at some adjournment thereof, as in such warrant or warrants shall be appointed, in order that out of them a jury of twelve may be sworn to inquire touching the matters in question ; and in case a sufficient number of jurymen shall not appear at such time and place, the said sheriff, bailiff, or other returning officer, or coroner, shall return other honest and indifferent men that can speedily be procured to attend that service, to make up the said jury to the number of twelve ; and all parties concerned may have their lawful challenges against any of the said jurymen ; and the clerk of the peace for the said county or place, or his deputy, is hereby empowered and required

Where persons shall neglect or refuse to treat, etc., commissioners to issue their warrants to the sheriff to impanel a jury.

Jury may be challenged. Witnesses to be summoned,

- Appendix.** to summon before the said justices all such persons as shall be thought necessary to be examined as witnesses touching the matters in question, and may order and authorise the said jury, or any six or more of them, to view the place or places or matters in controversy; which jury (upon their oaths, to be administered by the said justices, which oaths, as also the oath to such person as shall be called upon to give evidence, the said justices are hereby empowered to administer) shall inquire of, assess, and ascertain the sum or sums of money to be paid for the purchase of such lands, tenements, or hereditaments, or the recompense to be made for damages that may or shall be sustained as aforesaid, and to settle and ascertain in what proportions the sum or sums of money so assessed shall be paid to the several persons interested in the premises; and the said justices shall give judgment for such purchase moneys or recompense so to be assessed by such juries; which said verdict, and the judgment thereupon pronounced as aforesaid, shall be binding and conclusive to all intents and purposes against all parties, bodies politic, corporate, and collegiate, and all persons whomsoever.
- and examined upon oath.  
Jury to assess damages.
- Verdict of the jury to be binding.
- Commissioners may impose a fine on sheriff, witnesses, etc., making default.
- 27.** Provided always, that if any such sheriff, bailiff, or other returning officer, or coroner, or his deputy or agent, shall make default in the premises, every such person shall for every offence forfeit the sum of twenty pounds; and if any person so summoned and returned as aforesaid on such jury shall not appear, or appearing refuse to be sworn, or being sworn refuse to give his verdict, or in any other manner wilfully neglect his duty, contrary to the true intent of this Act, or if any person so summoned to give evidence shall not appear, or appearing refuse to be sworn or examined or to give evidence, every person so offending, having no reasonable excuse, to be allowed by the said justices, shall for every such offence forfeit and pay such sum as the said justices shall appoint, not exceeding the sum of five pounds for any one offence.
- Agreements to be filed with the clerk of the sewers.
- 28.** All the agreements, contracts, sales, and conveyances, and also all verdicts and judgments, which shall be made and given in relation to any such lands, tenements, and hereditaments as aforesaid (such verdicts and judgments being certified by the clerk of the peace of the county or place in which such verdict and judgment shall have been given), shall be delivered to and deposited with the clerk of the sewers for the county, limits, or district wherein such lands, tenements, or hereditaments are situate, and shall be filed with the rolls of the court or Commissioners of Sewers of such county, limits, or district; and the same, or a true copy thereof, shall be admitted as evidence in all courts whatsoever; and all persons shall have liberty to inspect the same, and take copies thereof, upon paying for every such inspection the sum of one shilling, and for every such copy not exceeding seventy-two words the sum of fourpence, and so in proportion for any greater number of words.
- By whom costs of jury and witnesses to be paid.
- 29.** In case any such jury or juries shall deliver a verdict for more money as a satisfaction for such lands, tenements, or property, or for any such loss or damage, than what shall have been offered by such commissioners for the same before the summoning or returning the said jury or juries, then and in such case the costs and expenses of summoning and returning the said jury and witnesses, and all other expenses attending the hearing and determining of such difference, shall be borne and paid by the said commissioners out of the same fund as the said purchase or compensation money is hereby directed to be paid; and such costs and expenses shall be ascertained and settled by an officer of one of his Majesty's superior Courts of Record at Westminster, to be nominated, in case of dispute, in the county of Middlesex by the Lord Chief Justice of the Court of King's Bench, and in every other county by the senior judge of the gaol delivery for the time being; but if any such jury or juries shall deliver a verdict for no more or for less money than

shall have been offered by the said commissioners before the summoning such jury or juries, then such costs and expenses (to be ascertained and settled in like manner) shall be borne and paid by the person with whom such commissioners shall have such controversy or dispute, and shall and may be levied by distress and sale of the goods and chattels of the person liable to pay the same, by warrant under the hands and seals of two justices of the peace for the county or place within which such verdict and judgment shall have been given; and the overplus (if any) after such costs and expenses and the charges of such distress and sale are deducted, shall be returned, upon demand, unto the owner of such goods and chattels.

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**30.** Every sum of money and recompense to be agreed for or assessed as aforesaid shall be paid for out of any moneys in the hands of the said commissioners which may be levied on the messuages, tenements, lands, and hereditaments, which shall receive benefit or avoid damage by or from such widening, straightening, deepening, repairing, and amending as aforesaid, or by or from making and maintaining any new walls, banks, sewers, guts, gotes, calcies, sluices, floodgates, cuts, and other works, aids, and defences; and upon payment to such parties or persons, or their agents, or left at their respective usual places of abode, or with the tenant in possession of such lands, tenements, hereditaments, and premises, or into the Bank of England in manner directed by this Act (as the case may be), then such lands, tenements, hereditaments, and premises respectively shall be vested in such commissioners, and shall and may be taken and used for straightening, widening, deepening, repairing and amending such rivers, streams, ditches, gutters, sewers, and watercourses, or for making and maintaining any new walls, banks, sewers, guts, gotes, calcies, sluices, floodgates, cuts, and other works, aids, and defences; and all parties and persons whomsoever shall be divested of all right and title to such lands, tenements, and hereditaments.

From what fund purchase and compensation moneys are to be paid.

**31.** If any money shall be agreed or assessed to be paid for the purchase of any lands, tenements, or hereditaments purchased, taken, or used by virtue of the powers of this Act, by any Commissioners of Sewers, which shall belong to any body politic, corporate, or collegiate, or to any feoffee in trust, executor, administrator, husband, guardian, committee, or other trustee, or for or on behalf of any infant, lunatic, idiot, femè covert, cestui que trust, or to any other person whose lands, tenements, or hereditaments are or may be limited in strict or other settlement, or to any person under any other disability or incapacity whatsoever, such money shall, in case the same shall amount to or exceed the sum of two hundred pounds, with all convenient speed be paid into the Bank of England in the name and with the privy of the Accountant-General of the Court of Exchequer, to be placed to his account there ex parte the Commissioners of Sewers for whom such lands, tenements, or hereditaments shall be taken, pursuant to the method prescribed by an Act passed in the first year of the reign of his late Majesty King George the Fourth, intituled "An Act for the better securing moneys and effects paid into the Court of Exchequer at Westminster on account of the suitors of the said court, and for the appointment of an Accountant-General and two masters of the said court, and for other purposes," and the general orders of the said court, and without fee or reward; to the intent that such money shall be applied, under the direction and with the approbation of the said court, to be signified by an order made upon a petition to be preferred in a summary way by the person who would have been entitled to the rents and profits of the said lands, tenements, and other hereditaments, in the purchase or redemption of the land tax, or in the discharge of any debt or debts, or such other incumbrances, or part thereof, as the said court shall authorise to be paid, affecting the same lands, tenements, or

Application of compensation money exceeding £200.

1 Geo. 4, c. 35.

**Appendix.**

hereditaments, or affecting other lands, tenements, or hereditaments standing settled therewith to the same or the like uses, trusts, intents, or purposes; or where such money shall not be so applied, then the same shall be laid out and invested, under the like direction and approbation of the said court, in the purchase of other lands, tenements, or hereditaments, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner, as the lands, tenements, or hereditaments which shall be so purchased, taken, or used as aforesaid stood settled or limited, or such of them as at the time of making such conveyance or settlement shall be existing undetermined and capable of taking effect; and in the meantime and until such purchase shall be made the said money shall, by order of the said court, upon application thereto, be invested by the said Accountant-General in his name in the purchase of Three Pounds Per Centum Consolidated or Three Pounds Per Centum Reduced Bank Annuities; and in the meantime and until the said bank annuities shall be ordered by the said court to be sold for the purposes aforesaid the dividends and annual produce of the said Consolidated or Reduced Bank Annuities shall from time to time be paid, by the order of the said court, to the person who would for the time being have been entitled to the rents and profits of the lands, tenements, or hereditaments to be purchased as aforesaid, in case such settlement or purchase were made.

Application of compensation money when less than £200 and not less than £20.

**32.** Provided always, that if any money so agreed or assessed to be paid for any lands, tenements, or hereditaments purchased, taken, or used for the purposes aforesaid, belonging to any corporation or to any person under any disability or incapacity as aforesaid, shall be less than the sum of two hundred pounds, and shall amount to or exceed the sum of twenty pounds, then and in all such cases the same shall, at the option of the person for the time being entitled to the rents and profits of the lands, tenements, or hereditaments so purchased, taken, or used, or of his guardian or committee in cases of infancy, idiocy, or lunacy, to be signified in writing under their respective hands, be paid into the Bank of England in the name and with the privy of the said Accountant-General, and be placed to his account as aforesaid, in order to be applied in manner hereinbefore directed; or otherwise the same shall be paid, at the like option, to two or more trustees to be nominated by the person making such option, and approved by six or more of the commissioners taking such lands, tenements, or hereditaments, such nomination and approbation to be signified in writing under the hands of the nominating and approving parties, in order that such principal money and the dividends and interest arising therefrom may be applied in manner hereinbefore directed, so far as the case be applicable, without obtaining or being required to obtain the direction or approbation of the said Court of Exchequer.

Application of compensation when less than £20.

**33.** Provided also, that when such money so agreed or assessed to be paid as before mentioned shall be less than the sum of twenty pounds, then and in every such case the same shall be applied to the use of the person who would for the time being have been entitled to the rents and profits of the lands, tenements, or hereditaments so purchased, taken, or used as aforesaid, in such manner as the said commissioners, or any six or more of them, shall think fit; or in case of lunacy, idiocy, or infancy, then to his guardian or committee, to and for the use and benefit of such person so entitled.

Persons in possession to be deemed lawfully entitled to the premises

**34.** Where any question shall arise touching the title of any person to any money to be paid into the Bank of England in the name and with the privy of the Accountant-General of the said Court of Exchequer, in pursuance of this Act, for the purchase of any lands, tenements, or hereditaments to be purchased in pursuance of this Act, or to any bank annuities

to be purchased with any such money, or to the dividends or interest of any such bank annuities, the person who shall have been in possession of such lands, tenements, or hereditaments at the time of such purchase, and all persons claiming under such person, or under the possession of such person, shall be deemed and taken to have been lawfully entitled to such land, tenements or hereditaments, according to such possession, until the contrary shall be shown to the satisfaction of the said Court of Exchequer; and the dividends or interest of the bank annuities to be purchased with such money, and also the capital of such bank annuities, shall be applied and disposed of accordingly, unless it shall be made to appear to the said court that such possession was a wrongful possession, and that some other person was lawfully entitled to such lands, tenements, or hereditaments, or to some estate or interest therein.

**Appendix.**

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until the contrary shall be shown to the Court of Exchequer.

35. In case the person to whom any sum or sums of money shall be assessed or agreed for the purchase of any lands, tenements, or hereditaments to be purchased by virtue of this Act shall refuse to accept the same, or shall not be able to make a good title to the premises to the satisfaction of the said commissioners or any six or more of them, or in case such person to whom such sum or sums of money shall be so assessed or agreed to be paid as aforesaid cannot be found, or if the person entitled to such lands, tenements, or hereditaments be not known or discovered, then and in every such case it shall and may be lawful to and for the said commissioners, or any six or more of them, to order the said sum or sums of money so assessed or agreed to be paid as aforesaid to be paid into the Bank of England in the name and with the privity of the Accountant-General of the Court of Exchequer, to be placed to his account, to the credit of the parties interested in the said lands, tenements, or hereditaments (describing them), subject to the order, control, and disposition of the said Court of Exchequer; which said Court of Exchequer, on the application of any person making claim to such sum or sums of money, or any part thereof, by motion or petition, shall be and is hereby empowered, in a summary way of proceeding, or otherwise, as to the said court shall seem meet, to order the same to be laid out and invested in the public funds, and to order distribution thereof, or payment of the dividends thereof, according to the estate, title, or interest of the person making claim thereunto, and to make such other order in the premises as to the said court shall seem just and reasonable; and the cashier of the Bank of England who shall receive such sum or sums of money is hereby required to give a receipt for the same (mentioning and specifying for what and for whose use the same is received) to such person as shall pay any sum or sums of money into the Bank of England as aforesaid.

If compensation money is refused, or titles not made, or if persons to whom money assessed cannot be found, money to be paid into the bank, subject to order of Court of Exchequer.

36. Provided always, that where by reason of any disability or incapacity of the person or corporation entitled to any lands, tenements, or hereditaments to be purchased under the authority of this Act, the purchase money for the same shall be required to be paid into the Court of Exchequer, and to be applied in the purchase of other lands, tenements, or hereditaments, to be settled to the like uses, in pursuance of this Act, it shall and may be lawful to and for the said Court of Exchequer to order the expenses of all purchases from time to time to be made in pursuance of this Act, or so much of the expenses as the said court shall deem reasonable, together with the necessary costs and expenses of obtaining such order, to be paid by the said commissioners, or any six or more of them, who shall from time to time pay such sum or sums of money for such purposes as the said court shall direct; and the said commissioners shall and may reimburse themselves all such payments as shall be so made by them as aforesaid in the manner directed, and out of the rates to be raised, levied, and collected for such purposes

Court of Exchequer may direct payment of expenses in cases where purchases of other lands are made.

**Appendix.** — respectively, under the powers and provisions of the said recited Acts and of this Act.

Houses and buildings, etc., not to be taken without consent.

**37.** It shall not be lawful for any court of sewers, in making any new walls, banks, sewers, cuts, gotes, calcies, sluices, floodgates, tumbling bays, and other works, reparations, amendments, aids, and defences authorised to be made and executed by the said recited Acts and this Act, or any or either of them, to take down, remove, or make use of any house or building, or any garden, yard, or paddock, or any park, planted walk, or avenue to a house, or any inclosed ground planted as an ornament or shelter to a house, or planted and set apart as a nursery for trees, or any part thereof respectively, without the consent in writing of the owner or proprietor thereof respectively, or of the person, body politic or corporate, hereby authorised to sell and convey as aforesaid, first had and obtained.

Vesting land in commissioners of sewers on payment of purchase money.

**38.** Upon payment or legal tender of such sum or sums of money as shall have been contracted or agreed for between the parties, or assessed by such juries in manner aforesaid, for the purchase of any such messuages, lands, tenements, hereditaments, and premises, or as a compensation for losses or damages as herein mentioned, to the proprietor or proprietors of such messuages, lands, tenements, hereditaments, and premises, or to such other person or persons, bodies politic or corporate or collegiate, as shall be interested therein or entitled to receive such money or compensation respectively, within thirty days next after the same shall be so agreed for or assessed, or upon payment of such sum or sums of money, within the said thirty days, into the Bank of England, in manner herein directed and required, for the use of the persons entitled thereto, it shall be lawful for the said commissioners, and their agents, servants, and workmen, to enter upon such messuages, lands, tenements, hereditaments, and premises respectively; and thenceforth such messuages, lands, tenements, hereditaments, and premises, together with the yearly profits thereof, and all the estate, use, trust, and interest of any person, bodies politic, corporate, or collegiate, therein, shall become and be vested in the said commissioners for ever; and such payment or tender shall not only bar all right, title, claim, interest, and demand of the person, bodies politic, corporate, or collegiate, to whom the same shall or ought to have been made, but also shall extend to and be deemed and construed to bar the dower of the wife of every such person, and all estates tail, and all other estates in reversion and remainder of his or their issue, and of every other person, bodies politic, corporate, or collegiate whomsoever therein.

Enabling commissioners to sell lands, etc., not wanted.

**39.** It shall and may be lawful for Commissioners of Sewers, or any six of them, in whom any lands and hereditaments shall be vested by virtue of this Act, to sell and dispose of the same or any part thereof, either together or in parcels, as they shall find most convenient and advantageous, to such person as shall be willing to contract for and purchase the same; and the money to arise and be produced by the sale or sales which may be made by the said Commissioners of Sewers of any land or hereditaments as aforesaid shall be applied to the purposes of making and maintaining sewers works in the limits, valley, level, or district in which such land or hereditaments so sold as aforesaid shall lie or be, but the purchaser thereof shall not be answerable or accountable for any misapplication or nonapplication of such money: Provided always, that the said Commissioners of Sewers, before they shall sell and dispose of any such land or hereditaments, shall first offer to sell the same to the owner of the adjoining land or ground; and an affidavit made and sworn before a master or master extraordinary in the High Court of Chancery, or before one of his Majesty's justices of the peace for the county, riding, or division in which such land and hereditaments shall lie, by some person not interested in the premises, stating that such

First offer to be given to owners of adjoining ground.

offer was made by or on behalf of the said commissioners, and that such offer was not then and thereupon agreed to or was refused by the person to whom the same was so offered, shall in all courts whatever be sufficient evidence and proof that such offer was made, and was not agreed to or was refused by the person to whom such offer was made (as the case may be); and in case such person shall be desirous of purchasing the same, and he and the said commissioners shall differ and not agree with respect to the price thereof, in such case the price thereof shall be ascertained by a jury in manner hereinbefore directed with respect to the disputed value of premises to be purchased by Commissioners of Sewers in pursuance of this Act; and the expense of hearing and determining such difference shall be borne and paid in like manner as hereinbefore directed with respect to purchases made by the said Commissioners of Sewers *mutatis mutandis*.

## Appendix.

40. All such conveyances of any lands, tenements, or hereditaments to be sold and disposed of by the said Commissioners of Sewers shall be expressed in the following or some similar form of words, as the circumstances of the case may require :

Form of conveyance from commissioners.

We, six of the Commissioners of Sewers acting in and for several limits [*here describe the limits as set forth in the Commission of Sewers*], in consideration of the sum of to us paid by of do hereby grant and release to the said all [*describing the premises to be conveyed*], and all right, title, and interest of the Commissioners of Sewers in and to the same and every part thereof, to hold unto the said his heirs, executors, administrators, and assigns for ever.

In witness whereof we have hereto set our hands and seals this day of in the year of our Lord .

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NOTE.—The above sections are printed as in the Revised Statutes.

## THE HIGHWAY ACT, 1835.

(5 & 6 WILL. 4, C. 50.)

*An Act to consolidate and amend the laws relating to highways in that part of Great Britain called England.* [31st August 1835.]

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The powers conferred upon the surveyor of the highways by this Act have been conferred by the various Highway Acts on the highway authorities constituted from time to time under these Acts. The highway authorities are now, since the Local Government Act, 1894, practically the borough and city councils and the urban and rural district councils for their respective districts, and the county councils in respect of main roads.

By the Public Health Act, 1875, s. 144, the urban sanitary authority was constituted the highway authority for urban sanitary districts, with all the powers of the surveyor of highways, and these urban sanitary authorities continue to exercise these powers as urban district councils. This applies to boroughs, improvement Act districts, and local board districts.

In rural districts considerably more confusion existed, as the highway authority might be either the surveyor elected annually by the parish vestry under this Act, or a board under this Act. It might be a highway board under the Highway Act, 1862, as amended by the Highway Act, 1864, which board exercised a jurisdiction over a highway district which consisted of several parishes.

**Appendix.** respectively, under the powers and provisions of the said recited Acts and of this Act.

Houses and buildings, etc., not to be taken without consent.

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Vesting land in commissioners of sewers on payment of purchase money.

38. Upon payment or legal tender of such sum or sums of money as shall have been contracted or agreed for between the parties, or assessed by such juries in manner aforesaid, for the purchase of any such messuages, lands, tenements, hereditaments, and premises, or as a compensation for losses or damages as herein mentioned, to the proprietor or proprietors of such messuages, lands, tenements, hereditaments, and premises, or to such other person or persons, bodies politic or corporate or collegiate, as shall be interested therein or entitled to receive such money or compensation respectively, within thirty days next after the same shall be so agreed for or assessed, or upon payment of such sum or sums of money, within the said thirty days, into the Bank of England, in manner herein directed and required, for the use of the persons entitled thereto, it shall be lawful for the said commissioners, and their agents, servants, and workmen, to enter upon such messuages, lands, tenements, hereditaments, and premises respectively; and thenceforth such messuages, lands, tenements, hereditaments, and premises, together with the yearly profits thereof, and all the estate, use, trust, and interest of any person, bodies politic, corporate, or collegiate, therein, shall become and be vested in the said commissioners for ever; and such payment or tender shall not only bar all right, title, claim, interest, and demand of the person, bodies politic, corporate, or collegiate, to whom the same shall or ought to have been made, but also shall extend to and be deemed and construed to bar the dower of the wife of every such person, and all estates tail, and all other estates in reversion and remainder of his or their issue, and of every other person, bodies politic, corporate, or collegiate whomsoever therein.

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First offer to be given to owners of adjoining ground.

offer was made by or on behalf of the said commissioners, and that such offer was not then and thereupon agreed to or was refused by the person to whom the same was so offered, shall in all courts whatever be sufficient evidence and proof that such offer was made, and was not agreed to or was refused by the person to whom such offer was made (as the case may be); and in case such person shall be desirous of purchasing the same, and he and the said commissioners shall differ and not agree with respect to the price thereof, in such case the price thereof shall be ascertained by a jury in manner hereinbefore directed with respect to the disputed value of premises to be purchased by Commissioners of Sewers in pursuance of this Act; and the expense of hearing and determining such difference shall be borne and paid in like manner as hereinbefore directed with respect to purchases made by the said Commissioners of Sewers *mutatis mutandis*.

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The powers conferred upon the surveyor of the highways by this Act have been conferred by the various Highway Acts on the highway authorities constituted from time to time under these Acts. The highway authorities are now, since the Local Government Act, 1894, practically the borough and city councils and the urban and rural district councils for their respective districts, and the county councils in respect of main roads.

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In rural districts considerably more confusion existed, as the highway authority might be either the surveyor elected annually by the parish vestry under this Act, or a board under this Act. It might be a highway board under the Highway Act, 1862, as amended by the Highway Act, 1864, which board exercised a jurisdiction over a highway district which consisted of several parishes.

**Appendix.**

By the Highways and Locomotives (Amendment) Act, 1878, it was provided that highway districts should in future be formed so as to correspond with rural sanitary districts, and the guardians were to become the highway authority.

In rural districts all these highway authorities are abolished by s. 25 of the Local Government Act, 1894, subject, however, to a proviso that the county council may postpone for three years the operation of that section as regards highways, or for such further period as the Local Government Board may, on the application of such council, allow. In place of these various authorities the rural district council shall have all their powers and shall be their successor. See, for example, *Re Isle of Wight Highway Commissioners* (1895). 72 L. T. 569.

As regards main roads, they are under the control of the county councils unless within a certain time the urban authority claim to retain the powers and duties of maintaining, repairing, and enlarging them. If the urban authority have not so claimed them, the county council is wholly to maintain and repair such part as is within their district, and the county council, "for the purpose of the maintenance, repair, improvement, and enlargement of and other dealing with such road, shall have the same powers and be subject to the same duties as a highway board."

The Highway Act, 1835, contains various powers of dealing with land compulsorily, and in respect of the exercise of such powers compensation is awarded. Besides the powers contained in this Act, the highway boards had power to purchase land or easements for the purpose of improving highways under the Highway Act, 1864 (27 & 28 Vict. c. 101), and the Lands Clauses Acts are incorporated for this purpose with the exception of the clauses relating to the purchase of land otherwise than by agreement.

The provisions of the Highway Act, 1835, which deal with the subject of this work, are here set out. By s. 22, the surveyor of county bridges has the same powers as regards these bridges and the approaches as the highway surveyor. The county councils have now the duty of maintaining county bridges, and besides the powers under this Act, they have the power of purchasing and taking land and buildings and taking materials under the County Bridges Acts of 1740 (14 Geo. 2. c. 33), 1803 (43 Geo. 3. c. 59), 1814 (54 Geo. 3. c. 90), and 1815 (55 Geo. 3. c. 143). See Pratt on Highways, 14th edit., pp. 655—670.

Power to use adjoining ground as a temporary road, where highway is ruinous, etc.

25. It shall be lawful for the surveyor to make a road through the grounds adjoining to any ruinous or narrow part of any highway (not being the site or ground whereon any house stands, nor being a garden, lawn, yard, court, park, paddock, plantation, planted walk, or avenue to any house, or inclosed ground set apart for building ground or as a nursery for trees,) to be made use of as a public highway whilst the old road is repairing or widening, making such recompense to the proprietor and occupier of such grounds for the damages they may thereby sustain as the justices at a special sessions for the highways assembled may think reasonable; such sum so awarded as a recompense to be recoverable in the same manner as any fines and forfeitures are recoverable under this Act.

By the Highway Act, 1864, s. 46, justices assembled in petty sessions may exercise any jurisdiction which they are authorised under any of the Highway Acts to exercise in special session.

Section 103 deals with the recovery of fines, which is done by distress and sale of the goods of the person ordered to pay.

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Tenant for life, etc., may renounce damages, etc.

49. It shall be in the power of tenants for life, ecclesiastical and lay corporations, and the proprietors of entailed estates, and of the trustees and guardians of any person under any legal disability or incapacity, to give up and renounce every claim of damage or compensation for such ground and materials as any highway may occupy on their respective properties, and such renunciation shall be equally binding on the heirs and successors of such persons: Provided, nevertheless, that such renunciation of claim of damage or compensation be in writing, and signed by such tenant for life, proprietor, trustee, or guardian, in the presence of two witnesses, or in the case of corporations in such manner and form as is usually adopted by such

corporations respectively ; and such renunciation shall be enrolled at the quarter sessions which shall be held next after the signing or execution thereof. **Appendix.**

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51. It shall and may be lawful for every such surveyor, in any waste land or common ground, river or brook, within the parish for which he shall be surveyor, or within any other parish wherein gravel, sand, stone, or other materials are respectively likely to be found (in case sufficient cannot be conveniently had within the parish where the same are to be employed, and sufficient shall be left for the use of the roads in such other parish), to search for, dig, get, and carry away the same, so that the said surveyor doth not thereby divert or interrupt the course of such river or brook, or prejudice or damage any building, highway, or ford, nor dig or get the same out of any river or brook within the distance of one hundred and fifty feet above or below any bridge, nor within the like distance of any dam or weir, and likewise to gather stones lying upon any lands or grounds within the parish where such highway shall be, for such service and purpose, and to take and carry away so much of the said materials as by the discretion of the said surveyor shall be thought necessary to be employed in the amendment of the said highways, without making any satisfaction for the said materials, but satisfaction shall be made for all damages done to the lands or grounds of any person or persons by carrying away the same, in the manner hereinafter directed for getting and carrying materials in inclosed lands or grounds ; but no such stones shall be gathered without the consent of the owner of such lands or grounds, or a license for that purpose from two justices at a special sessions for the highways, after having summoned such owner to come before him, and heard his reasons, if he shall appear and give any, for refusing his consent. Surveyor may take materials from waste lands, etc.

52. Provided always, that nothing in this Act contained relative to the gathering or getting of stones or other materials shall extend to any quantity of stones or other materials thrown up by the sea, commonly called beach, where the removal of the same would cause any damage or injury by inundation to the lands adjoining, or increased danger of encroachment by the sea. Proviso against materials from sea beach in certain cases.

53. It shall not be lawful for any surveyor, or any other person acting under the authority of this Act, to dig, gather, get, take, or carry away any materials for making or repairing any highway out of or from any inclosed land or ground, until one calendar month's notice in writing, signed by the surveyor, shall have been given to the owner of the premises from which such materials are intended to be taken, or to his known agent, and to the occupier of the premises from which such materials are intended to be taken, or left at the house or last or usual place of abode of such owner or agent, and also of such occupier, to appear before the justices at a special sessions for the highways, to show cause why such materials shall not be had therefrom ; and in case such owner, agent, or occupier shall attend pursuant to such notice, but shall not show sufficient cause to the contrary, such justices shall, if they think proper, authorise such surveyor or other person to dig, get, gather, take, and carry away such materials at such time or times as to such justices shall seem proper ; and if such owner, agent, or occupier shall neglect or refuse to appear by himself or his agent, the said justices shall and may (upon proof on oath of the service of such notice) make such order therein as they shall think fit, as fully and effectually to all intents and purposes as if such owner or occupier, or his agent, had attended. Notice to be given before materials are taken from private lands.  
  
If the owner, etc., shows cause against the removal, two justices shall decide thereon.

**Appendix.**

If sufficient materials cannot be found in waste lands, etc., surveyor may, with license of justices, take them from inclosed grounds or lands, making satisfaction to the owners.

54. It shall be lawful for every such surveyor, for the use aforesaid, by license in writing from the justices at a special sessions for the highways, to search for, dig, and get materials, if sufficient cannot be had conveniently within such waste lands, common grounds, rivers, or brooks, in or through any of the several or inclosed lands or grounds of any person whomsoever (such lands or grounds not being a garden, yard, avenue to a house, lawn, park, paddock, or inclosed plantation, or inclosed wood not exceeding one hundred acres in extent.) within the parish where the same shall be wanted, or within any other parish adjoining or lying near to the highway for which such materials shall be required, if it shall appear to such justices that sufficient materials cannot be conveniently had in the parish where such highways lie, or in the waste lands, or common grounds, rivers, or brooks of such adjacent parish, and that a sufficient quantity of materials will be left for the use of the parish where the same shall be, and to take and carry away so much of the said materials as by the discretion of the said surveyor shall be thought necessary to be employed in the amendment of the said highways, the said surveyor making such satisfaction for the materials which may be got or taken away, and also for the damage done to such lands or grounds by the getting and carrying away the same, as shall be settled and ascertained by order of the justices at a special sessions for the highways.

These four sections, 51—54, which deal with the taking of materials for the repair of highways, should be read together. The surveyor is given power to gather and dig for stones and gravel in waste lands in his parish, or if there are not sufficient in his own he may gather and dig for them in the waste lands of an adjoining parish. He may further gather stones lying on the surface of private land, except where it is of a strictly private nature, as garden, lawns, and such like as mentioned in s. 54. That proviso extends to s. 51. See *Arlesford Sanitary Authority v. Scott* (1881), 7 Q. B. D. 210. In none of these cases is compensation given for the value of the material removed, but it is given for the injury caused to the land by the removal.

Stones cannot be gathered from the lands of private owners unless the owner gives his consent, or after a month's notice has been given of the intention to take the same, and justices in petty sessions (generally special sessions) give their license. See form of license No. 55.

If materials cannot be got except by digging in private lands, then the justices may similarly give license for the materials to be got by digging in private lands. In such cases compensation is to be awarded alike for the value of the materials taken, and for the damage done by taking them. See these sections discussed in *Arlesford Sanitary Authority v. Scott* (1881), 7 Q. B. D. 210. For form, see *infra*, No. 56.

The expression "inclosed ground," used in s. 53, includes ground in the exclusive occupation of one or more persons for agricultural purposes, although not separated from the highway or adjoining land by any fence or inclosure (4 & 5 Vict. c. 51).

The license should state the particular place from which the material is to be taken. *Cf. Her v. Manning* (1757), 1 Burr. 377. If the place from which the material is to be taken is not one of the strictly private places excepted in s. 54, it does not matter whether the material has to be brought to the highways through such a place, as, for example, if it has to be carted along an avenue (*Ramsden v. Yeates* (1881), 44 L. T. 612). The license should not continue indefinitely, but should be limited to the particular occasion in respect of which it was granted (*Earl Mansera v. Bartholomew* (1878), 4 Q. B. D. 5). The compensation is to be settled by justices, and this is the only manner in which it is to be determined (*Peters v. Clarkson* (1844), 7 M. & G. 548), and it would appear that it should be assessed after the material has been removed, and not before. *Cf. Boyfield v. Porter* (1811), 13 East, 200.

Where a gravel pit had under an enclosure award been set aside for the surveyor of the highway to get gravel for the repair of the highway, it was held that this right passed to the county council on taking over the repair of such highway as a main road (*Norfolk County Council v. Bittering Highway Surveyor* (1894), 58 J. P. 479).

As to taking gravel from commons which have been enclosed, see the Commons Act, 1876 (39 & 40 Vict. c. 56). **Appendix.**

Holes made by the surveyor in waste lands, are by s. 55 required to be filled up, levelled or sloped down, and while open they should be fenced off.

67. The said surveyor, district surveyor, or assistant surveyor shall have power to make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses, and also to make and lay such trunks, tunnels, plats or bridges as he shall deem necessary, in and through any lands or grounds adjoining or lying near to any highway, upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials in inclosed lands or grounds are herein directed to be settled and paid. Surveyor to make and keep open ditches, etc., and to lay trunks, etc., through lands adjoining highway, paying for damage, if any, incurred.

As to settling compensation see s. 54; it is not necessary to tender satisfaction for damages before proceeding under this section (*Peters v. Claxson* (1844), 7 M. & G. 548; *Lister v. Zebley* (1837), 5 A. & E. 124).

82. Provided always, that where it shall appear, upon the view of two justices of the peace, that any highway is not of sufficient breadth, and might be widened and enlarged, such justices shall and they are hereby empowered, within their respective divisions, to order such highway respectively to be widened and enlarged in such manner as they shall think fit, so that the said highway, when widened and enlarged, shall not exceed thirty feet in breadth; and that neither of the said powers do extend to pull down any house or building, or to take away the ground of any garden, lawn, yard, court, park, paddock, planted walk, plantation, or avenue, to any house, or any inclosed ground set apart for a building ground or as a nursery for trees; and for the satisfaction of the person, body politic or corporate, who is seised or possessed of or interested in their own right, or in trust for any other person in the said ground that shall be laid into the said highway respectively so to be widened and enlarged, the said surveyor, under the direction and with the approbation of the said justices in writing, shall and is hereby empowered to make an agreement with him for the recompense to be made for such ground, and for the making such new ditches and fences as shall be necessary, according and in proportion to their several and respective interests therein, and also with any other person, body politic or corporate, that may be injured by the widening and enlarging such highway, for the satisfaction to be made to him respectively as aforesaid; and if the said surveyor, under the direction and with the approbation of the said justices, cannot agree with the said person, body politic or corporate, or if he cannot be found, or shall refuse to treat or take such recompense or satisfaction as shall be offered to them respectively by such surveyor, then the justices of the peace at any general quarter sessions to be holden for the limit wherein such ground shall lie, upon certificate in writing signed by the justices making such view as aforesaid of their proceedings in the premises, and upon proof of fourteen days notice in writing having been given by the surveyor of such parish to the owner, occupier, or other person, body politic or corporate, interested in such ground, or to his guardian, trustee, clerk, or agent, signifying an intention to apply to such quarter sessions, for the purpose of taking such ground, shall impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions; and the said jury shall upon their oaths, to the best of their judgment, assess the damages to be given and recompense to be made to the owners and Surveyor to agree with owners of lands for recompense for ground required for widening, etc.; and if they cannot agree, the same may be assessed by a jury at quarter sessions.

**Appendix.**

On payment  
of money  
assessed,  
ground to be  
deemed a  
public  
highway.

others interested as aforesaid in the said ground for their respective interests, as they shall think reasonable, not exceeding forty years purchase for the clear yearly value of the ground so laid out, and likewise such recompense as they shall think reasonable for the making of new ditches and fences on the side of the said highway that shall be so widened and enlarged, and also satisfaction to any person, body politic or corporate, that may be otherwise injured by the widening and enlarging the said highway respectively: and upon payment or tender of the money so to be awarded and assessed to the person, body politic or corporate, entitled to receive the same, or leaving it in the hands of the clerk of the peace of such limit, in case such person, body politic or corporate, cannot be found or shall refuse to accept the same, for the use of the owner of or others interested in the said ground, the interest of the said person, body politic or corporate, in the said ground shall be for ever divested out of them, and the said ground, after such agreement or verdict as aforesaid, shall be esteemed and taken to be a public highway to all intents and purposes whatsoever; saving nevertheless to the owner of such ground all mines, minerals, and fossils lying under the same which can or may be got without breaking the surface of the said highway, and also all timber and wood growing upon such ground, to be felled and taken by such owner within one month after such order shall have been made, or in default thereof to be felled by the said surveyor within the respective months aforesaid, and laid upon the land adjoining, for the benefit of the said owner; . . .

The rest of the section deals with making a rate for this purpose.

The provisions of this Act have been made applicable to highways, which are or may be repaired under local and personal Acts, except roads belonging to railway and canal companies and conservators of rivers, by the Highway Act, 1862 (25 & 26 Vict. c. 61), s. 44.

The value of the different interests held in any land which may be taken should apparently be assessed separately, as under the Lands Clauses Acts. See *Re v. Trustees of the Norwich and Watton Road* (1836), 5 A. & E. 563. The fact that notice has been given to the various persons interested should appear on the face of the proceedings, otherwise the order may be brought up on *certiorari* and quashed (*S.C.*, and *Re v. Bagshaw* (1797), 7 T. R. 363).

If the surface of the land is taken for the purpose of making highways under an Inclosure Act, and the mines are reserved to the lord of the manor, he will not be allowed to work the mines so as to injure the highways (*Benfieldside Local Board v. Consett Iron Co.* (1877), L. R. 3 Ex. D. 54; and see as to support, the Public Health (Support of Sewers) Act, 1883, *ante*, p. 493). If mine-owners lower the land without otherwise damaging the highway, an action appears to lie against them for nominal damages (*Attorney-General v. Conduit Colliery Co.*, [1895] 1 Q. B. 301).

The Highways and Locomotives (Amendment) Act, 1878, s. 27, permits the mine-owner to mine as he might do if the road had not become vested in the authority, "but so nevertheless that in such working or getting no damage shall be done to the road or highway."

If property is injuriously affected by altering the level of a highway by an urban district council under this Act, the owner whose premises are so affected cannot claim compensation under s. 308 of the Public Health Act, 1875 (*Burgess v. Norwich Local Board* (1880), 6 Q. B. D. 264); see *ante*, p. 467.

Costs of  
proceedings,  
by whom  
payable.

83. In case such jury shall give in and deliver a verdict for more moneys as a recompense for the right, interest, or property of any person, body politic or corporate, in such lands or grounds, or for the making such fence, or for such damage or injury to be sustained by him as aforesaid, than what shall have been proposed and offered by the said surveyor before such application to the said court of quarter sessions as aforesaid, then and in such case the costs and expenses attending the said several proceedings shall be borne and paid by the surveyor out of the moneys in his hands, or to be assessed and levied by virtue and under the powers of

this Act; but if such jury shall give and deliver a verdict for no more or for less moneys than shall have been so offered and proposed by the said surveyor before such application to the said court of quarter sessions then the said costs and expenses shall be borne and paid by the person, body politic or corporate, who shall have refused to accept the recompense and satisfaction so offered to him as aforesaid.

See the similar provision in the Lands Clauses Consolidation Act, 1845, s. 34 and notes, *ante*, p. 63.

NOTE.—The above sections are printed as in the Revised Statutes.

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## THE DEFENCE ACT, 1842.

(5 & 6 VICT. c. 94.)

*An Act to consolidate and amend the laws relating to the services of the Ordnance Department, and the vesting and purchase of lands and hereditaments for those services, and for the defence and security of the realm.*

[10th August 1842.]

This Act, although considerably amended, still remains in force as regards the provisions enabling land to be taken compulsorily for the defence of the realm. The powers given by this Act and the various amending Acts were transferred from the Ordnance Board to the Secretary of State for War by the Ordnance Board Transfer Act, 1855 (18 & 19 Vict. c. 117). The Secretary of State for War has also powers of acquiring land under the Military Lands Act, 1892 (55 & 56 Vict. c. 43), *ante*, p. 580, and probably in ordinary cases the procedure will be under that Act.

The various Acts which amend and extend the provisions of this Act are:—

The Defence Act, 1854 (17 & 18 Vict. c. 67).

The Ordnance Board Transfer Act, 1855 (18 & 19 Vict. c. 117).

The Defence Act, 1859 (22 Vict. c. 12).

The Queen's Remembrancer Act, 1859 (22 & 23 Vict. c. 21).

The Lands Clauses Act, 1860 (23 & 24 Vict. c. 106), s. 7, *ante*, p. 401.

The Defence Act, 1860 (23 & 24 Vict. c. 112).

The Ranges Act, 1891 (54 & 55 Vict. c. 54), s. 11.

The principal provisions of these as affecting this subject will be found set out in the notes hereto.

The preamble to this Act, which recited 44 Geo. 3, c. 95; 1 & 2 Geo. 4, c. 69; 3 Geo. 4, c. 108, and 2 & 3 Will. 4, c. 23, was repealed by the Statute Law Revision Act, 1888 (51 & 52 Vict. c. 57), and ss. 1—4 of this Act, which dealt with the repeal of those Acts, were repealed by the Statute Law Revision Act, 1874 (37 & 38 Vict. c. 94).

Sections 5—8, vested lands held for the use of the Ordnance and late Barrack Department, and other lands held for military defences in the principal officers of her Majesty's Ordnance, who were the persons also vested with the powers of purchasing and taking land under this Act. By the Ordnance Board Transfer Act, 1855 (18 & 19 Vict. c. 117), these lands and the powers mentioned in this Act, and the further powers as regards rights over commons contained in the Defence Act, 1854 (17 & 18 Vict. c. 117) (see *infra*, note to s. 19), were transferred to and vested in the Secretary of State for War for the time being, who is to be described in all contracts, conveyances, etc., as "her Majesty's Principal Secretary of State for the War Department."

The sections herein set out are printed as in the Revised Statutes. For the principal officers of her Majesty's Ordnance, throughout read the Secretary of State for War.

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9. It shall be lawful for the said principal officers for the time being of Principal her Majesty's Ordnance (a) from time to time to contract for and purchase lands, etc.,

**Appendix.**

and take  
leases on  
behalf of the  
Crown.

forts, lines, or other fortifications, manors, lands, tenements, or hereditaments, or to take or purchase any lease of the same which shall in their judgment be desirable to be purchased, for and on behalf of the said ordnance or barrack services, or the defence of the realm, upon such terms as to the said principal officers shall seem meet, and to enter into any contracts necessary for that purpose ; . . .

(a) Her Majesty's Principal Secretary of State for the War Department.

As to the further powers of purchasing and taking lands, see note to s. 19, *infra*.

By the Defence Act, 1859 (22 Vict. c. 12), as to conveyances of land, it is provided as follows :

2. Conveyances of land in England and Ireland to be purchased by the said Secretary of State may be according to the form in the Schedule (A.) to this Act, or as near thereto as the circumstances of the case admit ; and all conveyances so made shall be effectual to vest the land thereby conveyed in the said Secretary of State and his successors, and shall operate to bar and destroy all such estates tail, and other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever of and in the land comprised in such conveyances, as have been purchased or compensated for by the consideration given on the purchase ; but this enactment shall not in anywise interfere with or affect section 8 of the Defence Act, 1842.

**SCHEDULE (A.).***Form of Conveyance.*

I, \_\_\_\_\_, of \_\_\_\_\_, in consideration of the sum of \_\_\_\_\_ paid to me by her Majesty's Principal Secretary of State for the War Department do hereby convey to the said Secretary of State, and his successors, all the lands and hereditaments set forth in the Schedule hereto, together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by law empowered to convey, to hold the premises to the said Secretary of State and his successors for ever on behalf of her Majesty.

In witness whereof I have hereunto set my hand and seal, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_.

Power given  
to bodies  
politic and  
others to  
treat.

10. It shall be lawful for all bodies politic or corporate, ecclesiastical, or civil, and all feoffees or trustees for charitable or other public purposes, and for all tenants for life and tenants in tail, and for the husbands, guardians, trustees, committees, curators or attornies of such of the owners or proprietors of or persons interested in any messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, and hereditaments, which have been or may be hereafter agreed to be purchased or taken for the use of the said Ordnance Department, as shall be females covert, infants, lunatics, idiots, or persons beyond the seas, or otherwise incapable of acting for themselves, to contract or agree with the said principal officers for the time being, either for the absolute sale or exchange of any such messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments, or sale of any reversion after any estate or estates, for lives or years, or for the grant of any lease either for life or lives, or for any term of years certain, therein, or for such period as the exigency of the public service shall require, and to convey, surrender, demise, or grant the same accordingly ; and all contracts, sales, conveyances, enfranchisements, surrenders, leases, and agreements, which shall be made in pursuance hereof, shall be valid and effectual in law to all intents and purposes whatsoever, and shall be a complete bar to all dower and claims of dower, estates tail and other estates, rights, titles, trusts, and interests whatsoever.

The powers given to limited owners to sell in the Lands Clauses Acts are, apparently, extended to this Act, by the Lands Clauses Act, 1860, s. 7, *ante*, p. 403.

Section 11 has been repealed by the Statute Law Revision Act, 1874.

Sections 12—14 enable the Secretary for War to sell, exchange, let, or demise any of the hereditaments vested in him.

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15. Provided always, that in case any person or persons shall have any just and legal or equitable right to any of the messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, and hereditaments, which shall be so sold, exchanged, and conveyed as aforesaid (a), or to any part or parts thereof, or to any charge, incumbrance, or demand affecting the same, and not being under any of the disabilities hereinafter mentioned, and shall within five years next after such right shall by law or equity accrue to or become vested in him, her, or them respectively, or, being **Appendix.**  
femes covert (except femes covert whose estates have been or may be sold under the authority of this or any other Act for that purpose), persons within the age of twenty-one years, or out of the realm, or not of whole mind, at the time of such sale, exchange, and conveyance as aforesaid, shall, within five years next after they shall respectively come and be discovered at the age of twenty-one years, out of prison, within this land, or of whole mind, make out and establish such right or claim to the satisfaction of the said principal officers, then and in such case the principal officers shall make or cause to be made a fair and reasonable compensation or satisfaction for every such right and claim so made out and established as aforesaid; but such compensation or satisfaction shall not in any case exceed the amount of the purchase money or purchase moneys which shall have been paid to and received by the said principal officers for the messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, and hereditaments, in respect whereof such right or claim shall be so made out as aforesaid, or a proportional part thereof, exclusive of the value of any buildings or improvements which shall have been erected or made thereon for the use of the said Ordnance or Barrack Departments, or for the defence of the realm.

Compensation to be made where equitable rights are established;

but not to exceed the purchase money received by such principal officers.

(a) That is, sold by the Secretary of State as provided in ss. 12—14.

16. It shall be lawful for the principal officers of her Majesty's Ordnance for the time being to enter on, survey, and mark out, or to cause to be surveyed and marked out, any lands, buildings, or other hereditaments or easements wanted for the service of the Ordnance Department, or for the defence of the realm, or to stop up or divert any public or private footpaths or bridle-roads, and to treat and agree with the owner or owners of such lands, buildings, hereditaments, or easements, or with any person or persons interested therein, either for the absolute purchase thereof, or for the possession or use thereof during such time as the exigence of the public service shall require.

Principal officers may authorise persons to survey and mark out lands, and treat with owners for the absolute purchase thereof.

This land here mentioned cannot be taken compulsorily unless the necessity or expediency is certified as mentioned in s. 23, *infra*, or unless the enemy have actually invaded the United Kingdom.

17. Provided always, that whenever any footpath or bridle road shall be stopped up as aforesaid, another path or road shall be provided and made in lieu thereof respectively, at the expence of the Ordnance Department, and at such convenient distance therefrom as to the principal officers of her Majesty's Ordnance for the time being shall seem proper and necessary.

When foot-paths, etc., are stopped up, other paths to be made in lieu thereof.

18. It shall be lawful for all bodies politic or corporate, ecclesiastical or civil, and feoffees or trustees for charitable or other public purposes, and for all tenants for life and tenants in tail, and for the husbands, guardians, trustees, committees, curators, or attornies of such of the owners or proprietors of or persons interested in any such lands, buildings, or other hereditaments so surveyed and marked out as shall be femes cover, infants, lunatics, idiots, or persons beyond the seas, or otherwise incapable of acting for themselves, to contract and agree with such principal officers, either for

Bodies politic may agree for the sale of lands, etc.

**Appendix.**

the absolute sale of such lands, buildings, or other hereditaments, or for the grant of any lease, either for any term of years certain therein, or for such period as the exigence of the public service shall require, and to convey, surrender, demise, and grant the same to such principal officers, in trust for her Majesty accordingly ; and all such contracts, sales, conveyances, surrenders, leases, and agreements shall be valid and effectual in law to all intents and purposes whatsoever.

In default of treating or where the parties do not agree, the persons authorised by her Majesty may require two justices, etc., to put her Majesty's officers in possession.

19. In case any such bodies or other persons hereby authorised to contract on behalf of themselves or others as aforesaid, or any other person or persons interested in any such lands, buildings, or other hereditaments which shall be so marked out and surveyed as aforesaid, shall for the space of fourteen days next after notice in writing subscribed by or on behalf of the said principal officers shall have been given to the chief officer or officers of any such body, or to such other persons hereby authorised to contract on behalf of others, or interested themselves, as aforesaid, or left at his, her, or their usual place of abode, refuse or decline to treat or agree, or by reason of absence shall be prevented from treating or agreeing with the said principal officers, or shall refuse to accept such sum of money as shall be offered by the said principal officers as the consideration for the absolute purchase of such lands, buildings, or other hereditaments, or such annual rent or sum as shall be offered for the hire thereof, either for a time certain or for such period as the exigence of the public service may require, then and in such case it shall be lawful for the said principal officers to require two or more justices of the peace, or three or more deputy lieutenants (one of whom shall be a justice of the peace), or two or more deputy governors for the county, riding, city, or place where such lands, buildings, or other hereditaments shall be, to put the said principal officers, or any person appointed by them, into immediate possession of such lands, buildings, or other hereditaments ; which such justices or deputy lieutenants or deputy governors are hereby required to do, and shall for that purpose issue their warrants under their hands and seals, commanding possession to be so delivered, and shall also issue their warrants to the sheriff of the county, riding, city, or place wherein such lands, buildings, or hereditaments shall be situate, to summon a jury ; and every such sheriff is hereby authorised and required to summon and return a jury, properly qualified, of the number of twenty-four, and in the manner required by the laws of England Ireland and Scotland respectively, who shall meet at some convenient time and place to be mentioned in such summons, out of whom a jury of twelve shall be drawn, in such manner as juries for the trial of issues joined in her Majesty's Courts at Westminster and Dublin are drawn by law in England and Ireland respectively, and in such manner as juries are drawn by law for any trial in Scotland ; and in case a sufficient number shall not appear, the said sheriff shall choose others of the by-standers, or that can speedily be procured, being qualified as aforesaid ; and the said jurymen may be challenged by the parties on either side, but not the array ; and the said justices, deputy lieutenants, or governors respectively may summon witnesses, and adjourn any such meeting if jurymen or witnesses do not attend ; and the jury, on hearing any witnesses and evidence that may be produced, shall on their oaths, (which oaths, as also the oaths of such witnesses, the said justices, deputy lieutenants, or governors respectively are hereby empowered and required to administer,) find the compensation to be paid, either for the absolute purchase of such lands, buildings, or other hereditaments, or for the possession or use thereof, as the case may be : Provided always, that it shall not be lawful for the said principal officers to use any lands, buildings, or hereditaments taken under the compulsory process aforesaid for the barrack service, or to erect any barrack buildings thereon.

Jury to be summoned to value the premises.

The power to take land under this section is limited by the proviso in s. 23, *infra*.

**Appendix.**

As to compensation, see note to s. 2 of the Military Lands Act, 1892, *ante*, p. 583.

The powers given by this section of taking land have been very considerably amended and enlarged. By s. 7 of the Lands Clauses Act, 1860, s. 7, *ante*, p. 403, the powers of the Lands Clauses Acts are to be taken as herein contained. The Defence Act, 1854 (17 & 18 Vict. c. 67), extended the powers under these Acts to the extinction of rights of common as follows:

#### THE DEFENCE ACT, 1854.

1. It shall be lawful for the principal officers for the time being of her Majesty's Principal Ordnance (if they shall think proper so to do) to use and avail themselves of all the officers of powers and provisions contained in the Lands Clauses Consolidation Act, 1845, for ordnance may the purpose of ascertaining, making, and paying compensation for and extinguishing avail them- all rights of common, commonable, and other rights in, over, or affecting any lands selves of the soil of which has at any time been or shall hereafter be purchased or taken by the said principal officers, under the Defence Act, 1842, and for such purpose the principal powers con- officers for the time being of her Majesty's Ordnance shall be deemed and taken to tained in 8 & be promoters of an undertaking within the meaning of the Lands Clauses Consoli- 9 Vict c. 18, dation Act, 1845, and all the powers and provisions of the last-mentioned Act may, as to extin- if necessary, be treated as if they had been contained in the Defence Act, 1842, for the guishing purpose of being used or made available by the said principal officers for the time being : rights of Provided always, that nothing herein contained shall prejudice or affect the powers common, etc. and authorities of the principal officers of her Majesty's Ordnance for the time being under the last-mentioned statute.

2. And in case the said principal officers of her Majesty's Board of Ordnance shall Power of have purchased or shall hereafter purchase any land, and the common, commonable, valuer and other rights in and over the same, and a valuer shall have been appointed in the appointed matter of any inclosure proceeding in respect of such lands under the provisions of under Inclo- the Acts for the Inclosure, Exchange, and Improvement of Land, the duties and sure Act to powers of such valuer in relation to the land so purchased shall, upon payment of the cease on purchase money for such common, commonable, and other rights over the same, purchase of cease and determine, and the Inclosure Commissioners for England and Wales shall, common by an order under their seal, award such amount of compensation to such valuer as rights by they shall deem just to be paid by the said principal officers ; and such valuer shall be ordnance. bound to accept the same as a full compensation for his services in the matter of the said inclosure, so far as respects the land, and common, commonable, and other rights so purchased.

3. Any purchase of the soil of any lands, or of any common, commonable, or other Purchase may rights in or over the same, which shall be made under the provisions of any Act of be made Parliament, shall be valid in law to all intents and purposes, although at the time of although such purchase proceedings for an inclosure of such lands were or shall be proceeding. inclosure proceedings pending.

The provisions of this Act were extended to other lands by s. 1 of the Defence Act, 1859, but that section has been repealed by the Military Lands Act, 1892.

#### THE DEFENCE ACT, 1859.

By the Defence Act, 1859 (22 Vict. c. 12), s. 4, it is provided as follows :

4. The proviso at the end of section nineteen of the Defence Act, 1842, shall not extend to prevent the erection of barracks on any lands taken as therein mentioned, and being within any fortress or garrison town or appurtenant to any fortification, or to prevent any buildings on any such lands being used as or for barracks.

As to taking lands for barracks, see the Military Lands Act, 1892, *ante*, p. 580.

#### THE DEFENCE ACT, 1860.

By the Defence Act, 1860 (23 & 24 Vict. c. 112), which was an Act authorising the taking of land for and the construction of specific works, it was enacted by s. 46 as follows :

##### *Amendment of the Defence Act, 1842.*

46. And whereas the Defence Act, 1842, has been amended by divers Acts, and it 5 & 6 Vict. is expedient further to amend the same : c. 94 amended

The following provisions of this Act in relation to lands to be taken under this Act as herein stated.

**Appendix.** shall be applicable where lands are surveyed and marked out under the Defence Act, 1842, as amended as aforesaid; (that is to say.)

The provisions concerning the mode of serving notices on owners, lessees, and occupiers, and of notices, writs, or other documents on the said Secretary of State :

The provisions concerning the determination of the amount of compensation for lands otherwise than by agreement :

The provisions concerning the payment and application of compensation, and the disposition of securities on which the same may be invested, and of the interest and dividends of such compensation and securities :

And the provision concerning interests omitted to be purchased ; which last-mentioned provision shall apply as well with respect to lands already taken by the said Secretary of State, as with respect to lands to be hereafter taken by him under the said Defence Act as amended as aforesaid.

These provisions would appear to be—as to service, ss. 9 and 45 ; as to determining compensation, ss. 12—19 ; as to payment and application of compensation, ss. 19—23 ; and as to omitted interests, ss. 36—38.

#### *Service of Notice on Owners.*

How notices to be given.

9. Every such notice shall be served personally on the said parties, or left at their last usual places of abode, if any such can after diligent inquiry be found, and, in case any of such parties be absent from the United Kingdom, or cannot be found after diligent inquiry, shall be addressed to such party and left with the occupier of the lands, or, if there be no such occupier, affixed upon some conspicuous part of such lands :

If any of such parties be a corporation aggregate, such notice shall be left at the principal office of such corporation ; or, if no such office can after diligent inquiry be found, such notice shall be served on some principal member, if any, of such corporation, and a duplicate of the notice shall be addressed to such corporation and left with the occupier of the lands, or, if there be no such occupier, affixed upon some conspicuous part of such lands.

#### *Service on Secretary of State.*

Notices, etc., required to be served on or given by Secretary of State to be served on or given by the solicitor.

45. Any notice, summons, writ, or other document required to be served on the said Secretary of State may be served by being delivered to the Solicitor for the War Department for the time being, or by being left for him thereat ; and any notice, summons, writ, or other document required to be given by or on behalf of the said Secretary of State shall be given under the hand of such solicitor.

#### *Determination of Amount of Compensation otherwise than by Agreement.*

How compensation to be settled in case of neglect to treat.

12. If for fourteen days after the service of any such notice as aforesaid any party on whom the same is served fail to state the particulars of his claim in respect of any lands to which such notice relates, or to treat with the said Secretary of State as to the amount of compensation to be paid to such party or which he is empowered to agree upon,

Or if the said Secretary of State and such party do not within such fourteen days agree as to the amount of such compensation,

Such amount shall be settled by a jury in like manner as if the same were compensation for lands surveyed and marked out under the Defence Act, 1842, as amended by the Ordinance Board Transfer Act, 1855.

Provision where compensation claimed is under £200.

13. Provided always, that if the compensation claimed do not exceed two hundred pounds, the same shall be settled by two justices, in manner following ; that is to say, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before two justices at a time and place to be named in the summons ; and upon the appearance of the parties, or, in the absence of either of them, upon proof of due service of the summons, it shall be lawful for such justices to determine such amount, and for that purpose to examine the claimant and the witnesses of the parties upon oath.

Compensation to absent parties to be settled by a

14. Where by reason of absence from the United Kingdom any party is prevented from treating, or cannot after diligent inquiry be found, the amount of such compensation shall be determined by valuation in manner following ; that is to say, the said

Secretary of State shall make application to two justices ; and upon proof satisfactory to them that any such party is by reason of absence from the kingdom prevented from treating, or cannot after diligent inquiry be found, such justices shall, by writing under their hands, nominate a competent surveyor for determining the amount of such compensation as aforesaid ; and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

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Surveyor to be appointed by two justices.

15. If any surveyor wilfully and corruptly make any incorrect or false valuation, or wilfully and corruptly act in the matter hereof, he shall be guilty of a misdemeanor.

Surveyor acting corruptly to be guilty of a misdemeanor.

16. The said nomination shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the said Secretary of State, who shall at all times produce the said valuation and other documents, on demand, to all parties interested in the lands comprised therein.

Valuation to be preserved and produced on demand.

17. Where any damage has been sustained by reason of any works authorised by this Act in or upon lands required to be kept free from buildings and other obstructions, in respect of which works compensation has not been agreed upon, awarded, or otherwise ascertained prospectively, compensation shall be paid in respect thereof when the works have been done ; such compensation to be determined in like manner as other compensation under this Act, or as near thereto as circumstances admit.

Damage may be ascertained when works done.

18. In determining the amount of compensation in respect of damage sustained by reason of any such works, regard shall be had to any increase in the extent of land capable of being brought under cultivation by removal of banks, fences, hedges, and ditches, and to any improved drainage and other advantages derived from any such works.

In estimating damage from works regard to be had to advantages derived.

19. Where any covenant or agreement has been entered into with the principal officers of her Majesty's Ordinance or with the said Secretary of State in restraint of the right to build on any lands, and such covenant or agreement is legally or equitably binding on the owner of the lands, regard shall be had in ascertaining the amount of compensation to be paid under this Act for or in respect of such lands (whether the same are required to be taken absolutely or are required to be kept free from buildings) to the existing restriction arising out of such covenant or agreement.

Where any agreement in restraint of building exists, regard to be had thereto in estimating compensation.

The sections as to the payment and application of compensation will be found in the note to s. 25, *infra*.

*Subsequent Compensation for Interests omitted to be purchased.*

36. If at any time after the said Secretary of State has entered upon any lands vested in him under this Act, any party appear to be entitled to any estate, right, or interest in or charge affecting such lands, which through mistake and inadvertence has been omitted to be purchased or compensated for, the said Secretary of State shall nevertheless remain in the undisturbed possession of such lands, and shall be deemed to have an indefeasible title thereto, but shall pay compensation for any such estate, right, interest, or charge, which but for this enactment might be recovered or enforced, and also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the said Secretary of State thereon and the time of the payment of such compensation by the said Secretary of State, so far as such mesne profits or interest may be recoverable at law or in equity :

Provision as to interests omitted to be purchased.

Such compensation shall be agreed on or awarded and paid in like manner as the same would have been agreed on or awarded and paid in case the said Secretary of State had purchased or compensated for such estate, right, interest, or charge before his entering upon such lands, or as near thereto as circumstances will admit.

37. In estimating the compensation to be given for any such estate, right, interest, or charge affecting any lands, or for any mesne profits or interest, the jury or justices, as the case may be, shall assess the same according to the value of the lands at the time the same were entered upon by the said Secretary of State and without regard to any improvements or works made by him.

How value of such lands to be estimated.

38. In addition to the said compensation, the said Secretary of State shall, when the right to any such estate, right, interest, or charge has been disputed by him and determined in favour of the party claiming the same, pay the full costs and expenses

Secretary of State to pay the costs of litigation as to such lands

**Appendix.** of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof has taken place; and such costs and expenses shall, in case the same be disputed, be settled by the proper officer of the court in which such litigation took place.

#### THE RANGES ACT, 1891.

11.—(1) Where any land is acquired, either under the Defence Act, 1842, and the Acts amending the same, or for military purposes under any Act with which the Lands Clauses Acts are incorporated, the person or authority acquiring the land may require that the compensation to be paid for the land be settled by arbitration and not by reference to a jury, and thereupon the provisions of the Lands Clauses Acts with reference to arbitration shall, if not already applicable, apply for the purpose of settling the compensation.

(2) Section 4 of the Barracks Act, 1890, is hereby repealed.

The whole of this Act with the exception of the above section was repealed by the Military Lands Act, 1892.

Appeal may be made to the Court of Exchequer, etc., if either party is dissatisfied with the verdict of the jury.

20. Provided always, that if the said principal officers, or any person interested in the lands, buildings, or other hereditaments so marked out and surveyed, shall be dissatisfied with the verdict of any such jury, it shall be lawful for them, or their attorneys, in England and Ireland, to apply to the Court of Exchequer at Westminster or Dublin respectively in the term next, and in Scotland to apply within fourteen days after the finding any such verdict to the Court of Session in Scotland in time of session, or lord ordinary on the bills in time of vacation, and to suggest to the said courts or lord ordinary respectively that they have reason to be dissatisfied with such verdict, and forthwith give notice thereof to the said principal officers on the one part, or to the party so interested as aforesaid on the other part (as the case may be); and thereupon, in England and Ireland, the proceedings that shall have been had and the verdict of such jury shall be returned into the said Courts of Exchequer respectively, and, if it shall appear to the said courts to be proper, such suggestion shall be entered on such proceedings as aforesaid; and a writ shall thereupon, by rule of such court, or order of any judge of such court, be directed to the sheriff of the county where such lands, buildings, or other hereditaments shall lie, or, if the same shall lie in two counties, to the sheriff of either of such counties, to summon either a common or special jury, according to the application that shall have been made in that behalf, and as the court and as such judge shall allow, and who shall respectively be qualified, according to law, to appear before the said justice or justices of assize or nisi prius of that county at the next assizes, if the same shall not happen sooner than twenty-one days after such suggestion, otherwise at the next succeeding assizes, and the compensation to be paid either for the absolute purchase or for the possession or use of such lands, buildings, or other hereditaments (as the case shall be) shall at such assizes be ascertained by such jury, in like manner as any damages may be inquired of upon any inquisition or inquiry of damages by any jury before any judge of assize or nisi prius, and the verdict of such jury shall be returned to the said Court of Exchequer, and shall be final and conclusive; and in Scotland, if it shall appear proper to the said court of session or lord ordinary, upon such application, so to do, the said court or lord ordinary shall order and direct the sheriff of the county where such lands, buildings, or other hereditaments shall lie, or, if the same shall lie in two counties, to the sheriff of either of such counties, to summon another jury in the manner in which juries are summoned in Scotland, properly qualified according to law, to appear before the lords or lord of justiciary at the next circuit, if the same shall not happen sooner than twenty-one days after such application, other-

wise at the next succeeding circuit ; and the compensation as aforesaid for the lands, buildings, or other hereditaments (as the case shall be) shall at such circuit be ascertained by a jury drawn from the jury summoned as aforesaid in such manner as juries are drawn in Scotland, under the direction of the said lords or lord of justiciary aforesaid, and the verdict of such last-mentioned jury shall be final and conclusive, without being subject to review or challenge of any kind : Provided always, that it shall be lawful for the court that shall have allowed such inquiry, on any application made within four days after the commencement of the succeeding term, or session if in Scotland, to order any new trial in relation thereto.

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21. Provided always, that it shall be lawful for any jury impanelled before any justice of the peace or magistrate, or deputy lieutenant or deputy governor, or before any judge of assize or nisi prius, to ascertain the compensation to be paid for any lands, buildings, or other hereditaments under this Act, and they are hereby required to ascertain and settle the proportion to be paid out of such compensation to any persons having any interest as lessees or tenants at will, or otherwise, in any such lands, buildings, or other hereditaments, and the proportion to be paid out of such compensation shall be returned on the verdict : Provided also, that where any such inquiry before any judge of assize or nisi prius shall be had on the application of any such lessee or tenant at will, or other person having any inferior interest in any such lands, buildings, or other hereditaments, who may have been dissatisfied with the proportion of compensation settled by the jury to be paid in respect of such interest, it shall not be lawful for the jury in any such case to alter the amount of the entire compensation awarded by any former verdict to be paid for such lands, buildings, or other hereditaments, but only the proportion thereof to be paid to the person or persons having separate interests therein ; and it shall not be lawful for any jury on any such inquiry as aforesaid had before any judge of assize or nisi prius, as to any such compensation, on the application of any such officer as aforesaid, in any case in which the whole compensation awarded by them shall be the same as the whole compensation awarded by the former jury, to alter the proportion that shall have been settled by any such former jury, as to any separate interests in any such lands, buildings, or other hereditaments.

Jury may ascertain the proportion to be paid out of compensation for land to lessees, etc.

22. Provided also, that it shall be lawful for the court or judge or lord ordinary making any such rule or order to require that the party on whose application the same shall be made shall give such security as shall to such court, judge, or lord ordinary seem proper, for payment of costs, under such circumstances as shall be specified in any rule or order made for that purpose.

Court to require the party to give security for costs.

23. Provided always, that no such lands, buildings, or other hereditaments shall be so taken without the consent of the owner or owners thereof, or of any such person or persons as aforesaid, acting for or on the behalf of the owner or owners thereof, unless the necessity or expediency of taking the same shall be first certified by the lord lieutenant, or two of the deputy lieutenants, or by the governor or two deputy governors of the county, riding, city, or place in which such lands, buildings, or other hereditaments lie, and unless such lands, buildings, or other hereditaments be authorised by a warrant of the Treasury, or unless the enemy shall have actually invaded the United Kingdom at the time when such lands, buildings, or other hereditaments shall be so taken.

Lands not to be taken for the defence of the realm without consent of the owners, unless in certain cases.

24. In all cases where any lands, buildings, or other hereditaments shall have been taken under the provisions of the said recited Act of the forty-fourth year of the reign of his Majesty King George the Third, or shall be

Erections on lands taken for a temporary pur-

**Appendix.**

pose to be removed before the lands are restored to the owner, and compensation shall be made for the injury done.

In case of disagreement, how compensation shall be settled.

Act not to affect any agreement between the parties.

Purchase money payable to bodies politic, etc., how to be invested.

taken under the provisions of this Act, for any term of years, or for such period only as the exigencies of the public service shall require, it shall be lawful for the said principal officers, notwithstanding anything hereinbefore contained, or any other law to the contrary thereof notwithstanding, at any time before the possession thereof shall be delivered up to the owner or owners thereof, or other person or persons acting on his, her, or their behalf, to take down and remove all such buildings or other erections which shall or may have been built or erected thereon for the public service, after the same was or were so taken as aforesaid, and to carry away the materials thereof, making such compensation to the owner or owners of such lands, buildings, or other hereditaments, or other person or persons acting on his, her, or their behalf, for the damage or injury which may have been done thereto or to the soil thereof, by the erection of any such buildings, or otherwise, in consequence of the same having been occupied for the public service, as the said principal officers shall think reasonable, and as shall be agreed upon in that behalf; and if such owner or owners, or other person or persons acting on his, her, or their behalf, shall not be willing to accept the compensation so offered, it shall be lawful for the said principal officers to apply to and require two justices of the peace of the county, riding, city, or place to settle and ascertain the compensation which ought to be made for such damage or injury as aforesaid, and such justices shall settle and ascertain the same accordingly, and shall grant a certificate thereof; and the amount of such compensation, so settled and ascertained and certified, shall forthwith be paid by the treasurer, accountant, or other proper officer for the time being of the office or department for the use of which such lands, buildings, or other hereditaments shall have been taken to the person or persons entitled thereto: Provided always, that nothing in this Act contained shall extend or be construed to extend to alter, prejudice, or affect any agreement which hath been or shall or may be entered into by the said principal officers with any owner or owners of any such lands, buildings, or other hereditaments, or other person or persons acting on his, her, or their behalf, in relation to any such buildings or erections: but every such agreement shall remain valid and effectual in like manner as if this Act had not been passed.

25. Where any money shall have been or shall be agreed, or shall have been or shall be required by the verdict of any jury, to be paid or given by the said principal officers, for the absolute purchase or exchange of any messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, grounds, tenements, or hereditaments, or of any reversion as aforesaid, or of the enfranchisement of any copyhold or purchase of any other interest belonging to any such body, or other person or persons under any disability or incapacity, or not having the absolute interest therein, the said money, if the same shall amount to or exceed the sum of two hundred pounds, shall be paid into the hands or in the name of the remembrancer or other proper officer of her Majesty's Court of Exchequer at Westminster or Dublin, or the Queen's remembrancer or other proper officer of the said court at Edinburgh respectively, for the time being, for the use and benefit of the owners and proprietors of such messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments; and such remembrancer, Queen's remembrancer, or other proper officer respectively is hereby authorised and required to receive or accept and to give a discharge for the same, and upon the acceptation or receipt thereof to sign a certificate to the barons or judges of the said Court of Exchequer under his hand, purporting and signifying that such money or other consideration was received or accepted by and paid to him in pursuance of this Act, for the use and benefit of such owners or proprietors as shall be named in such certificate; and the said certificate shall be filed or deposited in the said

Court of Exchequer at Westminster, Dublin, or Edinburgh respectively, and a true copy thereof, signed by the said remembrancer, Queen's remembrancer, or other proper officer respectively of such court, shall and may be read and allowed as evidence for the purposes hereinafter mentioned; and the said remembrancer, Queen's remembrancer, or other proper officer respectively is hereby required, upon receipt of any such sum or sums of money as aforesaid, to pay the same into the Bank of England, or Bank of Ireland, or Bank of Scotland, or Royal Bank of Scotland, as the case may require; and immediately upon the filing or depositing of such certificate the said messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments shall be and become vested in the said principal officers of the Ordnance for the time being, for the service of the said Ordnance Department, or for the defence of the realm, in trust for her Majesty.

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Sections 25—30. By the Queen's Remembrancer Act, 1859 (22 & 23 Vict. c. 21), s. 8, it is provided that moneys to be paid to the Queen's remembrancer shall be paid into the Bank of England with the privity of the Accountant-General of the Court of Chancery, and the Court of Chancery was to have the same powers as the Barons of Exchequer in relation thereto. The Paymaster-General of the Supreme Court of Judicature now takes the place of the Accountant-General and the procedure as to payment in will be as stated in the notes to s. 69 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 131, and upon applications for investment in the notes to ss. 70 and 80 of that Act, *ante*, pp. 152—199.

These sections have been further amended by provisions of the Defence Act, 1860, which by s. 46 are to be incorporated in this Act. See *ante*, note to s. 19.

Section 20 of the Defence Act, 1860, provides that compensation under that Act shall be paid and applied as in ss. 25 to 30 of this Act amended as above, the following 1860. further provisions being made:

21. Where any compensation is required to be paid into the Bank of England or Ireland under this Act, there shall be added thereto a sum of thirty pounds as an equivalent for the expenses consequent upon such payment; and upon such compensation, with such additional sum (which shall be deemed part of such compensation), being so paid, the said Secretary of State shall be discharged from all liability in respect thereof: and the Court of Chancery may allot to the tenant for life or for any other partial or qualified estate, in respect of any expenses of investment incurred by him, any portion of any such compensation which the court may deem just.

22. The said Secretary of State may in any case at or after the expiration of three months from the time at which the compensation for any lands has been agreed upon or otherwise ascertained, if the owner thereof have not in the meantime made out a title thereto to the satisfaction of the said Secretary of State, pay such compensation, without such addition as aforesaid, into the Bank of England or Ireland in manner hereinbefore referred to; and such payment shall discharge the said Secretary of State from all liability in respect of the money so paid:

Provided always, that the Court of Chancery may, upon application for payment of such money to the party entitled, in case the court be of opinion that there was no unreasonable delay in deducing the title, or that a good title was shown, order all or any costs occasioned by such payment into court to be paid by the said Secretary of State.

23. All orders and directions in relation to any money paid into the Bank of England in the name and with the privity of the Accountant-General of the Court of Chancery under this Act, or the securities in or upon which the same may be invested, or the dividends or interest on such money and securities, which under the said Acts the Court of Chancery is empowered to make or give on motion or petition, may be made or given by the Master of the Rolls or any of the Vice-Chancellors while sitting at chambers, upon summons, in like manner as in other cases in which proceedings may be so had before the Master of the Rolls and Vice-Chancellor, subject, nevertheless, to any general rules and orders which may hereafter be made concerning the practice, proceedings, or business of the said court.

Under s. 23 it has been decided that applications for investment ought to be made by summons in chambers (*Re Maynard's Trusts* (1861), 30 L. J. Ch. 344). This is now the general practice; see Order 55, r. 2, set out in the notes to s. 70 of the Lands Clauses Act, 1845, *ante*, p. 156.

On payment into court of compensation, an addition to be made to meet future expenses. Provision for payment into court on failure for three months after compensation ascertained to deduce a title. Orders concerning money paid at chambers.

**Appendix.**

In applications for payment out of court of the money, the Secretary of State need not be served, and it would appear that he need not be served upon any application in respect of the money in court, as by s. 21 of the Defence Act, 1860, he is discharged from all liability (*Ex parte Morshead* (1863), 33 Beav. 234).

In the same case it was held that persons having contingent charges need not be served, and as to service generally, see notes to s. 80 of the Lands Clauses Act, 1845, *ante*, p. 189.

Barons, etc.,  
of Exchequer  
to make order  
for the in-  
vestment of  
such purchase  
money.

26. The barons or judges of her Majesty's Court of Exchequer at Westminster, Dublin, or Edinburgh, of the degree of the coif, for the time being, or any one or more of them, shall be and they or he are or is hereby authorised and empowered, in a summary way, upon motion or petition for or on behalf of any person or persons interested in or entitled to the benefit of the money so paid to and received by the said Queen's remembrancer or other proper officer respectively, or the interest or produce thereof, and upon reading the certificate directed to be signed by the said remembrancer, Queen's remembrancer, or other proper officer respectively concerning the same as aforesaid, and receiving such further satisfaction as they or he shall think necessary, to make and pronounce such orders and directions for paying the said money or any part of the same, or for placing out such part thereof as shall be principal in the public funds, or upon Government or real securities, and for payment of the dividends or interest thereof, or any part thereof, to the respective persons entitled to receive the same, or for laying out the principal or any part thereof, in the purchase of other lands or hereditaments, to be conveyed and settled to, for, and upon the same uses, trusts, intents, or purposes, as the said messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments, so purchased or taken, stood settled at the time of the payment of such money as aforesaid, or as near thereto as the same can be done, or otherwise concerning the disposition of the said money or any part thereof, and the interest of the same, or any part thereof, for the benefit of the person and persons entitled to and interested in the same respectively, or for appointing any person or persons to be a trustee or trustees for all or any of such purposes, as the said Court shall think just and reasonable.

Where a pond had been taken under the Defence Act, 1842, and the water which flowed from it diverted, so that an ancient flour mill which was driven by the water was stopped, the compensation awarded was allowed to be retained by the tenant for life, as previous to the award he had laid out a larger sum in erecting a steam engine and suitable machinery for working the mill, with the necessary buildings, the court considering this an investment in land (*In re Duke of Wellington's Settled Estates Act* (1860), 30 L. J. Ch. 187). As to the application of moneys in the case of tenant for life under the Settled Land Act, see the notes to s. 69 of the Lands Clauses Act, 1845, *ante*, p. 142.

Investment  
of purchase  
money when  
less than  
£200.

27. Provided always, that in case such purchase money as is lastly hereinbefore mentioned shall be less than the sum of two hundred pounds, and shall exceed the sum of twenty pounds, then and in all such cases the same shall, at the option of the person or persons for the time being entitled to the rents and profits of the messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments, so purchased, or of his, her, or their guardian or guardians, committee or committees, in case of infancy or lunacy, to be signified in writing under their respective hands, be paid into the hands of the said remembrancer, Queen's remembrancer or other public officer respectively of the said Court of Exchequer, in order to be applied in manner hereinbefore directed: or otherwise the same shall be paid, at the like option, to three trustees, to be nominated by the person or persons making such option, and approved of by the said principal officers, or any three or more of them, such nomination or approbation to be signified in writing, under the hands of the nominating

and approving parties, in order that such principal money may be invested in the purchase of stock in the public funds, and that such stock, when purchased, and the dividends arising therefrom, may be applied in manner hereinbefore directed, so far as the case be applicable, without obtaining or being required to obtain the order, direction, or approbation of the said Court of Exchequer.

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28. Provided always, that in case such purchase money shall be less than twenty pounds, then and in all such cases the same shall be applied to the use of the person or persons who would for the time being be entitled to the rents and profits of the messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, and hereditaments, so purchased, in such manner as the said principal officers, or any three or more of them, shall think fit, or in case of infancy or lunacy, then to his, her, or their guardian or guardians, committee or committees, for the use and benefit of such person or persons entitled respectively.

Investment of purchase money when less than £20.

29. Upon the death or removal of any such remembrancer, Queen's remembrancer, or other proper officer respectively, all stock and securities vested in him by virtue of this Act shall vest in the succeeding remembrancer, Queen's remembrancer, or other proper officer respectively, for the purpose hereinbefore mentioned, without any assignment or transfer; and all moneys paid into the said banks respectively in pursuance of this Act, or remaining in the hands of any remembrancer, Queen's remembrancer, or other proper officer respectively, at his death or removal, and not invested in the funds or placed out on securities as aforesaid, shall be paid to the succeeding Queen's remembrancer or other proper officer respectively for the time being.

Stock and securities vested in remembrancer, etc., shall in case of death or removal, vest in the successor.

30. Provided always, that where any question shall arise touching the title of any person to any money to be paid into the Bank of England, or Bank of Scotland, or Royal Bank of Scotland, in the name and with the privity of the remembrancer of the Court of Exchequer, or the Queen's remembrancer, or other proper officer, pursuant to the directions of this Act, or to any bank annuities to be purchased with any such money, or the dividends or interest of any such bank annuities, the person or persons who shall have been in possession of the property so purchased at the time of the purchase shall be deemed to have been lawfully entitled to such property according to such possession, until the contrary shall be shown to the satisfaction of the said Court of Exchequer, and the dividends or interest of the bank annuities to be purchased with such money, and also the capital of such bank annuities, shall be paid, applied, and disposed of accordingly, unless it shall be made to appear to the said Court that such possession or receipt was wrongful, and that some other person or persons was or were lawfully entitled to such property.

Persons in possession deemed entitled to the contrary shall be shown.

31. It shall be lawful for the said principal officers to cause all or any deeds, decrees, evidences, or writings, or other instruments whatsoever, relating to any messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments, in England or Wales, now or hereafter vested in the said principal officers, to be enrolled in the office of the remembrancer of her Majesty's Court of Exchequer, or in the High Court of Chancery; and such fees shall be paid for such enrolment as the Treasury shall from time to time appoint, not exceeding such fees as have been used and accustomed to be taken.

For enrolment of deeds relating to lands, etc., in England and Wales.

32. Any rule or practice requiring deeds to be acknowledged or requiring an affidavit or declaration to be made of the due execution of any deeds

Deeds not required to be acknowledged, etc.

**Appendix.** before enrolment, shall not apply to any deed, decree, evidence, or writing, or other instrument whatsoever by this Act required to be enrolled in her Majesty's Courts of Chancery or Exchequer in England or Ireland.

**Office copies of enrolments of such deeds, etc., admissible in evidence.** **33.** A copy of the enrolment of every such deed, decree, writing, or other instrument as aforesaid, signed by the proper officer having the custody of such enrolment, and proved upon oath to be a true copy, shall for every purpose whatsoever be sufficient evidence of the contents of such deed, decree, writing, or other instrument, in all courts of law and equity, and on every other occasion whatsoever shall be of the same force and effect, to all intents and purposes, as such deed, decree, writing, or other instrument would be if the same were respectively produced and shown forth.

**Ordinance may sue as "the principal officers of her Majesty's ordnance," without naming them.** **34.** It shall be lawful for the said principal officers, and their successors for the time being, and they are hereby authorised and empowered, to bring, prosecute, and maintain any action or actions of ejectment, or other proceedings at law or in equity, for recovering possession of any messuages, buildings, castles, lines, or other fortifications, manors, lands, tenements, or hereditaments, as now are or hereafter may be vested in them by this Act or otherwise howsoever, and to distrain or sue for any arrears of rent which shall have become or shall become due for or in respect thereof under any parol or other demise from the said principal officers, and also to bring, prosecute, and maintain any other action or suit in respect of or in relation to such messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments last aforesaid, or of any trespass or encroachment committed thereon, or damage or injury done thereto, and also upon all covenants and contracts whatsoever now or hereafter made by, to, or with the said principal officers relating to the said ordnance or barrack department, or the defence of the realm; and also to prosecute any other action, suit, or legal proceedings, civil or criminal, concerning the goods or chattels, stores, moneys, and other property, under the care, control, and disposition of the said principal officers; and in every such action, suit, or other proceedings the said principal officers for the time being shall be called "the principal officers of her Majesty's Ordinance," without naming them or any of them; and no such action, suit, or other proceedings shall abate by the death, resignation, or removal of such principal officers or any of them, any thing in any Act or Acts of Parliament, or law or laws, to the contrary thereof notwithstanding: Provided nevertheless, that nothing herein contained shall be taken to defeat or abridge, in any such action, suit, or other proceedings, the legal rights, privileges, and prerogatives of her Majesty, but that in all such actions, suits, or other proceedings, brought or instituted in the name and on behalf of the principal officers of her Majesty's ordnance, and in all matters relating thereunto, it shall be lawful for the said principal officers to claim, exercise, and enjoy all the same rights, privileges, and prerogatives, which have been heretofore claimed, exercised, and enjoyed in any actions, suits, or other proceedings whatsoever in any court of law or equity, by her Majesty or her predecessors, in the same manner as if the subject matter of the said suits or other proceedings were vested in the Crown, and as if the Crown were actually a party to such actions, suits, or other proceedings: Provided also, that it shall be lawful for her Majesty to proceed by information in her Court of Exchequer, or by any other Crown process, legal or equitable, in any case in which such actions, suits, arbitrations, or other proceedings might have been otherwise instituted.

**Privileges and prerogatives of the Crown not to be curtailed.**

As to service of writ on Secretary of State for War, see s. 45 of the Defence Act, 1860, in note to s. 19, *supra*.

**35.** [*Repealed by 37 & 38 Vict. c. 98 (Statute Law Revision Act, 1874).*]

36. It shall be lawful for the said principal officers for the time being, and they are hereby authorised and empowered, to give any notice, make any claim or demand, and to depute or authorise any person or persons to make an entry, which shall be requisite or expedient to be given or made by or on behalf of her Majesty with a view either to compel any tenant, lessee, or occupier of any part or parts of the said possessions of the Crown which are or may be by law vested in the principal officers of her Majesty's Ordnance, to quit or deliver up the possession thereof, or to compel the performance of any covenant, contract, or engagement in relation thereto, or to recover possession on non-performance of any covenant, contract, or agreement, or to compel the payment of any sum of money which ought to be paid in respect thereof, and to give any other notice, make any other claim or demand, and depute any person or persons to make any other entry which shall or may be requisite or expedient to be given or made by or for or on behalf of her Majesty, touching any of the said possessions which are or may be by law vested in the principal officers of her Majesty's Ordnance; and every such notice, claim, or demand which shall be given or made in writing under the hands of the said principal officers for the time being, or any two of them, for any of the purposes aforesaid, and every entry which shall be made by any person or persons deputed or authorised by the said principal officers to make the same, on behalf of her Majesty, into or upon any of the said estates or possessions, shall be good, valid, and effectual to all intents and purposes whatsoever.

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Principal officers empowered to give notices, make claims, and authorise entries, etc.

37. Nothing contained in this Act, or to be contained in any covenant, contract, lease, or other instrument hereby authorised to be entered into, made, taken, or executed by the said principal officers or any of them, shall extend to charge the person or persons of all or any of the said principal officers executing any such covenant, contract, lease, or other instrument, or the heirs, executors, or administrators of the same principal officers, or any of them, or their or any of their own proper lands, tenements, goods, or chattels, with or for the performance of all or any of the covenants, conditions, or agreements in the same covenant, contract, lease, or other instrument to be contained on the part of the same principal officers, or any of them: nor shall any officer of her Majesty's Ordnance be personally liable, nor shall the property of any such officer be liable to any legal process or execution in such actions, suits, arbitrations, or other proceedings as aforesaid.

Principal officers exempted from personal responsibility.

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**Appendix.****COMPENSATION IN THE COUNTY OF LONDON.**

MANY of the improvements in London have been carried out under special Acts of Parliament, but powers of dealing with land compulsorily are conferred generally by various statutes on the various local authorities which govern London, some of which statutes are public Acts and some personal and local.

The central authority is now the London County Council, to which body was transferred all the powers of the Metropolitan Board of Works (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40). The other authorities to carry out the powers and duties of the Metropolis Management Acts, the Public Health (London) Act, and other like Acts are in the city, the common council, and in the various metropolitan boroughs, the borough councils.

It is proposed to deal here with the powers of taking and interfering with land in London which are given by statutes not merely for a specific or transient purpose. The Acts are arranged in chronological order.

**THE METROPOLITAN PAVING ACT, 1817**

(MICHAEL ANGELO TAYLOR'S ACT).

(57 GEO. 3, C. XXIX.)

*An Act for better paving, improving, and regulating the streets of the metropolis, and removing and preventing nuisances and obstructions thereon.*

[16th June 1817.]

\* \* \* \* \*

This Act is commonly known as Michael Angelo Taylor's Act. It originally conferred powers upon commissioners and trustees, who within the weekly bills of mortality and certain other parishes were appointed to superintend and regulate streets and public places. By s. 90 of the Metropolis Local Management Act, 1855 (18 & 19 Vict. 120), all the powers of all existing commissioners and trustees were transferred to the vestries and district boards then constituted, and by s. 73 of the Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), it was extended to the whole of the metropolis. The powers of the vestries and district boards were in turn transferred to the borough councils by the London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4. In the City of London, the Commissioners of Sewers had the powers under this Act, but they were dissolved, and their powers transferred to the Common Council by 60 & 61 Vict. c. cxxxiii. It has been in some respects impliedly repealed by the later Metropolitan Acts (see *Fortescue v. Vestry of St. Matthew, Bethnal Green*, [1891] 2 Q. B. 170; *Summers v. Holborn Board of Works*, [1893] 1 Q. B. 612), but there has been nothing like a general repeal of its provisions. See *Wyatt v. Gems*, [1893] 2 Q. B. 225.

The Highway Act, 1835, *ante*, p. 697, also applies to London (*Back v. Holmes* (1887), 56 L. T. 713); but s. 112 thereof expressly provides that nothing therein contained shall limit the powers contained in Michael Angelo Taylor's Act. The borough councils, as successors of the vestries and district boards, exercise the powers of the surveyor of highways in London (Metropolis Management Act, 1855, s. 96; London Government Act, 1899, s. 4 (1)). The Metropolitan Building Act, 1894 (57 & 58 Vict. c. cxxiii.), s. 6, also saves the powers of any local authority to widen, alter, or improve any street.

The sections (80—96) dealing with the taking of land for the widening of streets are as follows: **Appendix.**

80. And be it further enacted, that for the improvement of the streets and public places in the parochial or other districts within the jurisdiction of this Act, and for the public advantage, it shall and may be lawful to and for the commissioners or trustees, or other persons having the control of the pavements of any parochial or other district, from time to time, and at all times hereafter, to alter, widen, turn, or extend any of the streets or other public places within any such parochial or other district (except turnpike roads), and to lengthen and continue or open the same from the sides or ends of any streets or public places within any parochial or other district, into any other street or public place within such or any other parochial or other district, and to raise, level, lower, drain, ballast, gravel, or pave such new part or parts of any such streets or public places so altered, widened, extended, opened, or lengthened as aforesaid; and that if any houses, walls, buildings, lands, tenements, and hereditaments, or any part thereof, shall be adjudged by the said commissioners or trustees, or other persons as aforesaid, to project into, obstruct, or prevent them from so altering, turning, widening, extending, lengthening, continuing, or opening the said streets or public places within the said parochial or other district, and that the possession, occupation, and purchase of such houses, walls, buildings, lands, tenements, or hereditaments will be necessary for that purpose, it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, and they shall have full power and authority to treat, contract, and agree, or to employ any person or persons to treat, contract, and agree with the several owner or owners, occupier or occupiers of all such houses, walls, buildings, lands, and hereditaments, of whatsoever nature, tenure, kind, or quality, for the purposes aforesaid, and to pay for the same such sum and sums of money as shall be agreed upon by the said commissioners or trustees, or other persons as aforesaid, and the owner or owners, occupier or occupiers thereof, out of the money to arise and be raised and to be received by them, either by virtue of any local Act or Acts of Parliament relating to such parochial or other districts, or of this Act, and to pull down, use, sell, or dispose of such houses, walls, and buildings, and the materials thereof, and lay the sites thereof, and also such other lands, tenements, or hereditaments, or so much thereof as they, the said commissioners or trustees, or other persons as aforesaid, shall think proper, into the said streets, or other public places; and all such new parts of such streets or public places, and the owners and occupiers of houses and buildings, messuages, and other hereditaments therein and adjoining thereto, shall be subject and liable to all the rates, assessments, powers, provisions, orders, clauses, and things to be made by virtue of or contained in any local Act or Acts of Parliament relating to such parochial or other district, or by virtue of or contained in this Act in the same manner as the present streets and public places included in any such local Act or Acts, or within the jurisdiction of this Act, and the owners and occupiers of houses or buildings, and messuages or other hereditaments therein and adjoining thereto.

Streets may be widened and improved with consent of owners.

*"Persons having the control of the pavements."*—These are now the common council in the city, and the borough councils in the metropolitan boroughs.

*Procedure to take lands, etc.*—The procedure under these sections is that the local authority shall by resolution adjudge that the houses, buildings, walls, etc., or any part thereof, obstruct or prevent them from altering or widening the street, and that the possession thereof is necessary for that purpose. Each adjudication becomes a specific description of the property which may be taken, and without it all the proceedings for taking the premises will be void. Only the premises contained in the adjudication can be taken and no more. Thus, if part of premises are so adjudicated, part only can be taken (*Thomas v. Daw* (1866), L. R. 2 Ch. 1).

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The adjudication must be honest, and, if honest, it cannot be questioned, even although it is erroneous. *S. C.*, but "honestly" is to be used in the sense that it is to be exercised only where the circumstances of the case fairly warrant such a proceeding. Thus, if a strip of land is required to widen a street, the authority cannot adjudge that the whole of a vacant piece of land is necessary (*Gard v. Commissioners of Sewers of the City of London* (1885), 28 Ch. D. 486). Similarly, if the authority before adjudicating have agreed, after using a small part for widening, to sell the remainder of the site of two houses to a third party, and so interfere with the right of pre-emption given to the vendor by s. 96, the court will grant an injunction to restrain them from taking the whole of the houses on the ground that the adjudication has not been honest (*Ferrelly v. Limehouse Board of Works* (1899), 68 L. J. Ch. 344).

The authority, in order to adjudicate properly, must determine what the improvement is to be, so far at least as to furnish materials for judging whether the property is required. The widening must not be so minute as to be merely colourable, as in a case where the improvement is really to alter the level of a street and not to widen it, as the authority is not authorised to take land for the purpose of altering the levels of streets (*Lynch v. Commissioners of Sewers of the City of London* (1886), 32 Ch. D. 72).

For form of adjudication, see Appendix, *post*. As to the owner's right of pre-emption, see s. 96, *post*.

After the adjudication it is usual to serve a notice to treat in conformity therewith, but the Act does not require one. See *per* COTTON, L.J., in *Lynch v. Commissioners of Sewers* (1886), 32 Ch. D. 72, p. 85. If, however, a notice to treat is served which includes several pieces of land belonging to one person, the jury must be summoned to assess the value of all, and separate juries cannot be summoned to assess the value of each piece (*Ecclesiastical Commissioners v. Commissioners of Sewers of London* (1880), 14 Ch. D. 305).

If a notice to treat is given under this Act, it has been held that the vestry will be bound by it, and that the court will issue a *mandamus* to compel the vestry to issue their warrant to summon a jury to assess the compensation. BLACKBURN, J., stated the principle generally thus: "That whenever by Act of Parliament a body is entitled to take lands compulsorily, then, as soon as they have made up their minds to do so, and give the other side notice of their intention, thereby hampering the land and leaving it no longer free in the hands of the owner, they are bound to go on" (*Birch v. Vestry of St. Marylebone* (1869), 20 L. T. (N.S.) 697).

"Or any part thereof."—These words have given rise to considerable dispute. Local authorities acting under these sections are authorised to take part of a plot of land or of a house or building (*Thomas v. Daw* (1866), L. R. 2 Ch. 1). In the case of a vacant plot of land this is clearly so, and they will be restrained from taking more than they reasonably require (*Gard v. Commissioners of Sewers of the City of London* (1885), 28 Ch. D. 486).

In the case of houses and buildings much more difficulty has arisen, and the cases are not easy to reconcile. In the last-mentioned case, BOWEN, L.J., suggested that "in the case of a house or building it may be necessary to take all when they only want to use part on the improvements. That would be a question of fact in each case" (p. 513).

In *Teuliere v. Vestry of St. Mary Abbots, Kensington* (1885), 30 Ch. D. 642, the vestry adjudicated and gave notice to treat for the buildings and site of an orphanage, although only a part was necessary for the widening. The owners desired to sell part only, and stated that the remainder without much additional outlay could be sufficiently adapted to the requirements. On these facts, and confining himself to these facts only, PEARSON, J., granted an injunction restraining the vestry from taking more than they required.

In *Gordon v. Vestry of St. Mary Abbots, Kensington*, [1894] 2 Q. B. 742, the authority proposed to take part only of a house. On motion for an interlocutory injunction to restrain them from so doing, the court refused the injunction and held that the local authority could take part of a house unless facts are shown that it would be unreasonable; but the court (CAVE and COLLINS, JJ.) expressed an opinion that a portion of a house could not be taken if by so doing the identity of the house would be destroyed. If a part was so separable that it could be removed without destroying the house as a house, then the authority could take that part, but not if the effect will be to so alter the character and condition of the house that it can no longer be occupied as the kind of structure it was before.

In *Aldis v. London Corporation*, [1899] 2 Ch. 169, KEKEWICH, J., took a somewhat different view. The defendant corporation had adjudged that the whole of a certain house was required for the widening. It was proposed to use 400 square feet out of 700 for the purpose of widening. The plaintiffs, who were lessees, stated

that they could carry on their business on the remainder, but it would seem that the identity of the premises would be destroyed. *KEKEWICH, J.*, held that the corporation could not take the whole unless they could prove that the part left would be useless to the plaintiffs, and granted an injunction to restrain the defendants from taking the whole. In *Fernley v. Limehouse Board of Works* (1900), 64 J. P. 328, the same judge repeated the view stated in the previous case, and said that in his view the authority cannot take more than they want unless the owner insists, but decided that it was within their power to take the whole of two houses in cases where they must pull down the whole of the houses in order to take the part they required.

In a subsequent case, a vestry requiring part of the site of a house for the purpose of widening, gave notice to treat for that part only, being the front wall and four feet. *STIRLING, J.*, following *Gordon v. St. Mary Abbots, Kensington, supra*, held that they may be compelled to take the whole if the removal of the part would substantially injure the enjoyment of the house in the manner in which it was formerly enjoyed (*Gibbon v. Paddington Vestry*, [1900] 2 Ch. 794). It was also decided in that case that ineffectual negotiations by the owner for the sale of part does not prevent him from afterwards relying on his legal rights.

"*Disused churchyards.*"—It has been held that portions of disused churchyards may be sold under this Act and the City of London Sewers Act, 1851 (14 & 15 Vict. c. 91), for the purpose of widening streets, subject to a faculty (*Vicar of St. Botolph Without, Aldgate v. Parishioners of Same*, [1892] P. 161). A sale of land under this Act is a sale under an Act of Parliament so as to bring the land within the exception in s. 5 of the Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), and it can therefore be built upon (*Attorney-General v. Trustees of the London Parochial Charities*, [1896] 1 Ch. 541). Whether a chancellor can grant a faculty for this purpose in the absence of a desecularising Act would appear doubtful, but it is the custom to grant such faculties in the Consistory Court of London. See this discussed in *In re Plumstead Burial Ground*, [1895] P. 225; and see also *In re Bideford Parish Church*, [1900] P. 214, before the Court of Arches.

Where after a notice to treat the claimant sent in a statement of particulars innocently representing that a tenancy was a weekly and not a yearly one, the purchasers on a summons under the Vendor and Purchaser Act, 1874, were held entitled to compensation (*In re Smart and the Stepney Borough Council*, Times, December 15th, 1902).

Under this section and ss. 96 and 144 of the Metropolis Management Act, 1855, a council can enter into an agreement to acquire land for street widening in consideration of their re-erecting a sign-post in a convenient situation on the edge of a footpath (*Hoare & Co., Limited v. Lewisham Corporation* (1902), 67 J. P. 20).

81. And be it further enacted, that it shall and may be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, or others having a partial or qualified interest or estate in any houses, lands, tenements, or hereditaments, husbands, femes covert, guardians, trustees, and feoffees in trust for charities or other purposes, committees, executors, or administrators, and all other persons whomsoever, not only on behalf of themselves, and their respective heirs, executors, administrators, and successors, but also on behalf of all persons entitled in reversion or remainder expectant on an estate tail, and on behalf of all persons entitled in reversion or remainder expectant on an estate for life, or other less estate, or by way of executory devise, in case such persons shall be incapacitated or decline to treat, and on behalf of their respective wives and cestui que trusts, whether infants, issue unborn, lunatics, idiots, femes covert, or others, and for all and every other person or persons whomsoever who are and shall be seised, possessed of, or interested in any such houses, lands, tenements, or hereditaments, to treat and agree with the said commissioners or trustees, or other persons having the control of the pavements in the streets or public places in any parochial or other district within the jurisdiction of this Act as aforesaid, for the absolute sale thereof, and to sell and convey to the said commissioners or trustees, or other persons as aforesaid, by feoffment, lease, and release, or bargain and sale, by deeds indented and enrolled in any of his Majesty's Courts of Record at Westminster, for such valuable consideration as shall be bonâ fide agreed upon for such houses, lands, tenements, or hereditaments

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**Appendix.** as shall be adjudged necessary and convenient for the purposes aforesaid; and that all contracts, agreements, sales, or conveyances which shall be bonâ fide made for the purposes aforesaid, shall be good and effectual in the law to all intents and purposes, anything to the contrary thereof in anywise notwithstanding.

When parties refuse or are unable to treat, etc., a precept to be issued for impanelling a jury,

who are to be drawn as 3 Geo. 2, c. 25, directs.

Jurymen may be challenged.

Justices, on the application of either party, may direct a view of the premises. Jury to assess the value on oath.

82. And be it further enacted, that if any body or bodies politic, corporate, or collegiate, or any other person or persons seised or possessed or interested in any such houses, buildings, lands, tenements, or hereditaments as aforesaid, shall refuse to treat or agree, or shall not agree, or by reason of absence or disability cannot agree with the said commissioners or trustees or other persons having the control of the pavements of any streets or public places in any parochial or other district within the jurisdiction of this Act, or with any person or persons authorised by them, for the sale and conveyance of their respective estates and interest therein, or cannot be found or known, or shall not produce and evince a clear title to the premises they are in possession of, or to the interest they claim therein, to the satisfaction of the said commissioners or trustees, or other persons as aforesaid, or of the person or persons so authorised by them, then and in every such case it shall be lawful for the said commissioners or trustees or other persons as aforesaid, and they are hereby required to issue a warrant or warrants, precept or precepts, directed to the sheriff or sheriffs, or bailiff or other proper officer of the city, borough, or county wherein the premises shall respectively lie or be, who is hereby authorised, directed, and required accordingly to impanel, summon, and return a competent number of substantial and disinterested persons qualified to serve on juries, not less than forty-eight nor more than seventy-two; and out of such persons so to be impanelled, summoned, and returned, a jury of twelve men shall be drawn by some indifferent person to be by the said commissioners or trustees or other persons as aforesaid appointed, in such manner as juries for the trial of issues joined in his Majesty's courts at Westminster are by an Act made in the third year of the reign of his late Majesty King George the Second, intituled "An Act for the better Regulation of Juries," are directed to be drawn; which persons, so to be impanelled, summoned, and returned as aforesaid, are hereby required to come and appear before the justices of the peace for the city, borough, or county wherein the premises shall lie or be, at some court of general or quarter sessions of the peace to be holden in and for the same city, borough, or county, or at some adjournment thereof, as in such warrant or warrants, precept or precepts, shall be directed and appointed, and to attend such court of general or quarter sessions from day to day until discharged by the said court; and all parties concerned shall and may have their lawful challenges against any of the said jurymen, but shall not be at liberty to challenge the array; and the said justices are hereby authorised and empowered, by precept or precepts, from time to time as occasion shall require, to call before them all and every person and persons whomsoever who shall be thought proper and necessary to be examined as a witness or witnesses on his, her, or their oath or oaths, touching or concerning the premises; and the said justices, if they think fit, shall and may, on the application of either party, likewise authorise the said jury to view the place or places or premises in question, in such manner as they shall direct; and the said justices shall have power to adjourn such court from day to day as occasion shall require, and to command such jury, witnesses, and parties to attend until all such affairs for which they were summoned shall be concluded; and the said jury upon their oaths (which oaths, as also the oaths of such person or persons as shall be called upon to give evidence, the said justices are hereby empowered and required to administer) shall inquire of the value of such houses, buildings, lands, tenements, or hereditaments, and of the proportionable value of the respective estates and interest of all and every person and persons

seized or possessed thereof, or interested therein, or of or in any part or parts thereof, and shall assess and award the sum or sums of money to be paid to such person or persons, party or parties respectively, for the purchase of such houses, buildings, lands, tenements, or hereditaments, and of such respective estates and interest therein, and also for goodwill, improvements, or any injury or damage whatsoever that may affect any such person or persons, party or parties, either as leaseholders or tenants at will, provided that such goodwill shall be estimated by what, in the opinion of such jury, the same would have been worth in case the improvements intended by this Act had not been in contemplation; and the said justices shall and may give judgment for such sum or sums of money so to be assessed; which verdict or verdicts, and the judgment and judgments, determination and determinations thereupon (notice in writing being given to the person or persons interested or claiming so to be, at least fourteen days before the time of the meeting of the said justices as aforesaid and jury, by leaving such notice at the dwelling-house of such person and persons, or at his, her, or their last usual place or places of abode, or with some tenant or occupier of the premises respectively intended to be valued), shall be binding and conclusive to all intents and purposes whatsoever against all bodies politic, corporate, and collegiate, and all and every person and persons claiming any estate, right, title, trust, use, or interest, in, to, or out of such houses, buildings, lands, tenements, or hereditaments and premises in possession, reversion, remainder, or expectancy, as well infants and issue unborn, lunatics, idiots, and femes covert, and persons under any other legal incapacity or disability, as all other cestui que trusts, their, his, and her heirs, successors, executors, and administrators, and against all other persons whomsoever; and the said verdicts, judgments, and determinations, and all other proceedings of the said justices and juries, so to be made, given, and pronounced as aforesaid, shall be fairly written on parchment, and signed by the clerk of the peace for the time being of the city, borough, or county wherein the premises shall respectively lie or be; and in case it shall so happen that the sum or sums of money so to be assessed and awarded in consequence of such refusal to treat and agree as aforesaid, as the value of such houses, buildings, lands, tenements, or hereditaments, or as such proportional value as aforesaid, and as the recompense and satisfaction to be made for the injury or damage sustained as before mentioned respectively, shall not exceed the sum or sums of money which the said commissioners or trustees, or other persons as aforesaid, or any person or persons authorised by them, shall have previously offered to pay as and for such value, recompense, and satisfaction; then and in every such case all the reasonable costs, charges, and expenses of causing and procuring such value and recompense to be assessed and awarded as aforesaid, and also assessing and awarding the same, shall be borne and paid by the body or bodies politic, corporate, or collegiate, or other person or persons so seized or possessed of or interested in such houses, buildings, lands, tenements, or hereditaments, and so refusing to treat and agree as before mentioned respectively; and the said commissioners or trustees, or other persons as aforesaid, are hereby authorised and empowered to deduct and retain the said costs, charges, and expenses out of the sum or sums of money so to be assessed or awarded as aforesaid, or out of any part thereof: Provided always, that in all cases where any person or persons shall by reason of absence have been prevented from treating about such recompense or satisfaction as aforesaid, such costs and charges shall be borne and paid by the said commissioners or trustees, or other persons as aforesaid, in manner aforesaid.

**Appendix.**

Verdict of the jury, etc., to be final, previous notice being given to the parties interested.

If the sum assessed shall not exceed the sum offered,

the costs of such assessment, etc., to be paid by such body politic, etc., and the commissioners, etc., may retain the same out of the sum so assessed.

For forms under this section, see Appendix, *post*. In the case of yearly tenants and tenants at will, see procedure set out in s. 90.

The provision as to costs should be noted, as it is quite different from that of the Lands Clauses Consolidation Act, 1845, ss. 34, 52, *ante*, pp. 63, 89. Under this Act if the

**Appendix.**

council make no offer or if the amount awarded is more than the amount offered, each party pays his own costs, and no order can be made requiring the council to pay the costs of the landowner (*R. v. London JJ., Ex parte Phelps*, [1895] 1 Q. B. 881).

Justices  
empowered  
to impose  
fines for non-  
attendance.

83. And be it further enacted, that the said justices shall have power from time to time to impose any reasonable fine, not exceeding the sum of £20, on such sheriff or bailiff, or his deputy or deputies, bailiffs or agents respectively, making default in the premises, and on any of the persons who shall be summoned and returned on any such jury or juries, and shall not appear, without sufficient excuse, or appearing shall refuse to be sworn on the said jury or juries, or being so sworn shall not give his or their verdict; and also on any person or persons who shall be summoned to give evidence touching any of the matters aforesaid, and shall not attend, or attending shall refuse to be sworn, or to affirm, or who shall refuse to give his, her, or their evidence, and on any person or persons who shall in any other manner wilfully neglect his, her, or their duty in the premises, contrary to the true intent and meaning of this Act; and from time to time to levy such fine or fines, by order of the said justices, by distress and sale of the offender's goods and chattels, together with the reasonable charges of every such distress and sale, returning the overplus (if any) to the owner or owners; and that a copy of the order of the said justices, signed by the clerk of the peace for the time being of the city, borough, or county wherein the premises shall lie or be, as the case shall require, shall respectively be sufficient authority to the person or persons therein to be appointed, and to every other person acting or aiding and assisting therein, to make such distress and sale; and all such fines shall be paid to the treasurer or treasurers of the commissioners or trustees, or other persons as aforesaid, having the control of the pavements in the parochial or other district wherein such premises shall lie or be, or to such other person or persons as they may respectively from time to time appoint.

Application  
of compensa-  
tion where  
exceeding  
£200.

84. And be it further enacted, that if any money shall be agreed or awarded to be paid for any lands, buildings, tenements, or hereditaments, or for any other matter, right, or interest, of what nature or kind soever, purchased, taken, or used by virtue of the powers of this Act for the purpose thereof, which shall belong to any corporation, feme covert, infant, lunatic, or person or persons under any other disability or incapacity, such money shall, in case the same shall amount to the sum of £200, with all convenient speed be paid into the Bank of England, in the name and with the privity of the Accountant-General of the High Court of Chancery, to be placed to his account there ex parte the said commissioners or trustees, or other persons having the control of the pavements of the streets or public places in the parochial or other districts within the jurisdiction of this Act, wherein such lands, buildings, tenements, or hereditaments shall be or lie as aforesaid, together with the name or names of such person or persons as the said commissioners or trustees or other persons as aforesaid, by writing signed by them, shall direct and appoint, to the intent that such money shall be applied, under the direction and with the approbation of the said court, to be signified by an order made upon a petition to be preferred in a summary way by the person or persons who would have been entitled to the rents and profits of the said lands, buildings, tenements, or hereditaments, in the purchase of land tax, or discharge of any debt or debts, or such other incumbrance or part thereof as the said court shall authorise to be paid, affecting the same lands, buildings, tenements or hereditaments, or affecting other lands, buildings, tenements, or hereditaments standing settled therewith to the same or the like uses, intents, or purposes; or where such money shall not be applied, then the same shall be laid out and invested, under the like direction and approbation of the said court, in the purchase of other messuages, lands, buildings, tenements, or hereditaments, which shall be conveyed

and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner, as the messuages, lands, buildings, tenements, and hereditaments which shall be so purchased, taken, or used as aforesaid, stood settled or limited, or such of them as at the time of making such conveyance and settlement shall be existing undermined and capable of taking effect; and in the meantime and until such purchase shall be made, the said money shall, by order of the Court of Chancery, upon application thereto, be invested by the said Accountant-General, in his name, in the purchase of £3 per centum consolidated or £3 per centum reduced bank annuities; and in the meantime and until the said bank annuities shall be ordered by the said court to be sold for the purposes aforesaid, the dividends and annual produce of the said consolidated or reduced bank annuities shall from time to time be paid, by order of the said court, to the person or persons who would for the time being have been entitled to the rents and profits of the said lands, buildings, tenements, and hereditaments so hereby directed to be purchased, in case such purchase or settlement were made.

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85. Provided always, and be it further enacted, that if any money so agreed or awarded to be paid for any lands, buildings, tenements, or hereditaments, or for any other matter, right, or interest, of what nature or kind soever, purchased, taken, or used for the purposes aforesaid, and belonging to any corporation, or to any person or persons under disability or incapacity as aforesaid, shall be less than the sum of £200, and shall exceed the sum of £20, then and in all such cases the same shall, at the option of the person or persons for the time being entitled to the rents and profits of the hereditaments so purchased, taken, or used, or of his, her, or their guardian or guardians, committee or committees, in case of infancy or lunacy, to be signified in writing under their respective hands, to be paid into the bank in the name and with the privy of the said Accountant-General of the High Court of Chancery, and be placed to his account as aforesaid, in order to be applied in manner hereinbefore directed; or otherwise the same shall be paid, at the like option, to two trustees, to be nominated by the person or persons making such option, and approved of by the said commissioners or trustees, or other persons as aforesaid (such nomination and appropriation to be signified in writing under the hands of the nominating and approving parties), in order that such principal money, and the dividends arising thereon, may be applied in any manner hereinbefore directed, so far as the case may be applicable, without obtaining or being required to obtain the direction or approbation of the Court of Chancery.

86. Provided also, and be it further enacted, that where such money so agreed or awarded to be paid as next before mentioned shall be less than £20, then and in all such cases the same shall be applied to the use of the person or persons who would for the time being have been entitled to the rents and profits of the hereditaments and premises so purchased, taken, or used for the purposes of this Act, in such manner as the said commissioners or trustees, or other persons as aforesaid, shall think fit; or in case of infancy or lunacy, then to his, her, or their guardian or guardians, committee or committees, to and for the use and benefit of such person or persons so entitled respectively.

87. And be it further enacted that upon payment of any sum or sums so agreed or awarded to the party or parties to whom the same shall be so awarded, or upon the deposit of the same in the Bank of England in manner by this Act directed (as the case may be), the said lands, tenements, and hereditaments, in respect whereof the same shall have been so paid or deposited as aforesaid, shall vest in the commissioners or trustees, or other persons as aforesaid for the time being, in manner and for the purposes

Application where the compensation does not exceed £200 nor less than £20

Application where the money is less than £20.

On payment of the purchase money premises to vest in commissioners, etc.

**Appendix.**

aforesaid, who shall be deemed in law to be in the actual possession thereof to all intents and purposes whatsoever, freed and discharged from all former and other estates, rights, titles, interests, claims, and demands whatsoever.

Where any question shall arise touching the title to money to be paid, the person who shall be in possession of lands, etc., at the time of such purchase, shall be deemed entitled thereto, according to such possession, unless, etc.

88. Provided always, and be it further enacted, that where any question shall arise touching the title of any person to any money to be paid into the Bank of England in the name and with the privity of the Accountant-General of the Court of Chancery, in pursuance of this Act, for the purchase of any lands, tenements, or hereditaments, or of any estate, right, or interest in any lands, tenements, or hereditaments to be purchased in pursuance of this Act, or to any bank annuities to be purchased with any such money, or the dividends or interest of any such bank annuities, the person or persons who shall have been in possession of such lands, tenements, or hereditaments at the time of such purchase, and all persons claiming under such person or persons or under the possession of such person or persons, shall be deemed and taken to have been lawfully entitled to such lands, tenements, or hereditaments, according to such possession, until the contrary shall be shown to the satisfaction of the said Court of Chancery; and the dividends or interest of the bank annuities to be purchased with such money, and also the capital of such bank annuities, shall be paid, applied, or disposed of accordingly, unless it shall be made to appear to the said court that such possession was a wrongful possession, and that some other person or persons was or were lawfully entitled to such lands, tenements, or hereditaments, or to some estate or interest therein.

The Court of Chancery may order reasonable expenses of purchase to be paid by the commissioners, etc.

89. Provided also, and be it further enacted, that where by reason of any disability or incapacity of the person or persons or corporation entitled to any lands, tenements, or hereditaments to be purchased, or purchased under the authority of this Act, the purchase money for the same shall be required to be paid into the Court of Chancery, and to be applied in the purchase of other lands, tenements, or hereditaments to be settled to the like uses in pursuance of this Act, it shall be lawful for the said Court of Chancery to order the expenses of all purchases from time to time to be made in pursuance of this Act, or so much of such expenses as the said court shall deem reasonable, to be paid by the said commissioners or trustees, or other persons as aforesaid, who shall from time to time pay such sums of money for such purposes, as the said court shall direct.

There was some divergence of opinion as to whether costs of obtaining an *interim* investment or of payment out were payable by the authority taking the land. See *Ex parte Vicar of St. Sepulchre* (1864), 33 L. J. Ch. 372; *In re Saunders' Estate* (1869), L. R. 8 Eq. 681; *In re Harrison's Estate* (1870), L. R. 10 Eq. 532; *In re Mercerom* (1877), 7 Ch. D. 184; *Ex parte Mercers' Co.* (1879), 10 Ch. D. 481. The Judicature Act, 1890, s. 5, has given the court full discretion in these cases, and costs will be awarded as under s. 80 of the Lands Clauses Act, 1845, *ante*, p. 178. *In re Fisher*, [1894] 1 Ch. 450, where the court ordered the costs of the payment out of money paid in under this Act to be paid by the authority taking the land.

Tenants at will, etc., to deliver possession on six months' notice.

90. And be it further enacted, that every tenant at will or lessee for a year, or any other person or persons in possession of any such houses, buildings, lands, tenements, and hereditaments, or any part thereof, which shall be purchased by virtue and for the purposes of this Act, and who shall have no greater interest in the premises than as tenant at will or lessee for a year, or from year to year, shall deliver up the possession of such premises to the said commissioners, or trustees, or other persons as aforesaid having the control of the pavements in the streets or public places in the parochial or other division within the jurisdiction of this Act, wherein such houses, buildings, lands, tenements, and hereditaments, or to such person or persons

as the said commissioners or trustees, or other persons as aforesaid shall appoint to take possession of the same, upon having six calendar months' notice to quit such possession from the said commissioners or trustees, or other persons as aforesaid, or from the person or persons so authorised by them; and such person or persons in possession shall at the end of the said six calendar months, whether such notice be given with reference to the time or times of such tenants holding or not, or so soon as he, she, or they shall be required, peaceably and quietly deliver up the possession of the said premises to the said commissioners or trustees, or other persons as aforesaid, or the person or persons authorised by the said commissioners or trustees, or other persons as aforesaid, to take possession thereof; and in case any such tenant should be compelled to quit before the expiration of his or her term in any such premises, then and in such case the said commissioners or trustees, or other persons as aforesaid, shall and they are hereby required to make satisfaction and compensation for the loss or damage which he or she shall or may sustain thereby; and in case any difference or dispute shall arise as to the amount of such satisfaction or compensation, the same shall or may be determined, settled, and ascertained by a jury, in such and the like manner as the sum or sums of money to be paid for the purchase of any lands, tenements, or hereditaments is herein directed to be determined, settled, and ascertained; and that in case any such person or persons so in possession as aforesaid shall refuse to give such possession as aforesaid, it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, to issue their precept or precepts to the sheriff or sheriffs, or bailiff, or other proper officer of the city, borough, or county wherein such parochial or other district shall be situate, to deliver possession of the said premises to such person or persons as shall in such precept or precepts be nominated to receive the same; and the said sheriff or sheriffs or bailiff, and every other proper officer, is hereby authorised and required to deliver such possession accordingly of the said premises, and to levy such costs as shall accrue from the issuing and execution of such precept or precepts on the person or persons so refusing to give possession as aforesaid, by distress and sale of his, her, or their goods.

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91. And be it further enacted, that all and every person and persons who shall have any mortgage or mortgages on such houses, buildings, lands, tenements, and hereditaments, not being in possession thereof by virtue of such mortgage or mortgages, shall on the tender of the principal money and interest due thereon, together with the amount of six calendar months' interest on the said principal, by the said commissioners or trustees, or other persons having the control of the pavements in the streets or public places in such parochial or other district, within the jurisdiction of this Act, wherein the said houses, buildings, lands, tenements, and hereditaments shall lie or be as aforesaid, or by such person or persons as they shall appoint, immediately convey, assign, and transfer such mortgage or mortgages to the said commissioners or trustees or other persons as aforesaid, or to such person or persons as they shall appoint; or in case such mortgagee or mortgagees shall have notice in writing from the said commissioners or trustees or other person as aforesaid, or from such person or persons as they shall appoint, that they will pay off and discharge the principal money and interest which shall be due on the said mortgage or mortgages at the end or expiration of six calendar months, to be computed from the day of giving such notice, and then at the end of six calendar months, on payment of the principal and interest so due, such mortgagee or mortgagees shall convey, assign, and transfer his, her, or their interest in the premises to the said commissioners or trustees or other persons as aforesaid, or to such person or persons as shall be appointed in trust for them; and in case the mortgagee or mortgagees shall refuse to convey and assign as aforesaid on such tender or cease.

**Appendix** payment, that then all interest on every such mortgage shall from thenceforth cease and determine.

The mort-  
gagees not to  
be paid more  
than the real  
value of  
premises.

92. Provided always, and be it further enacted, that in case the sum due upon any such mortgage or mortgages, with all interest due thereon, shall amount to more than the real value of the premises, to be ascertained as directed by this Act, then the said commissioners or trustees or other persons as aforesaid shall not be liable to pay to the mortgagee or mortgagees more than such real value of such premises, so ascertained as aforesaid.

Bargains and  
sales to have  
the force of  
fines and  
recoveries.

93. And be it further enacted, that the conveyance of any such estate or interest of any feme covert to the said commissioners or trustees or other persons as aforesaid for the time being, or any five or more of them, or any person or persons in trust for them, by indenture or indentures of bargain and sale, sealed and delivered by such feme covert, in the presence of and attested to two credible witnesses, and duly acknowledged, and to be enrolled in the High Court of Chancery within six calendar months after the making thereof shall as effectually and absolutely convey the estate and interest of such feme covert in the premises as any fine or fines, recovery or recoveries, would or could do, if levied or suffered thereof in due form of law; and further, that all bargains and sales whatsoever to be made of any such houses, buildings, lands, tenements, and hereditaments, as shall be purchased by the commissioners or trustees or other persons as aforesaid for the time being, by virtue and for the purposes of this Act, and enrolled as aforesaid, shall have the like force, effect, and operation in law, to all intents and purposes, as any fine or fines, recovery or recoveries whatsoever would have had if levied or suffered by the bargainer or bargainors, or any person or persons seised of or entitled to any estate or interest in the premises in trust for such bargainer or bargainors, in any manner or form whatsoever.

Upon pay-  
ment of  
principal and  
interest into  
the bank,  
premises to  
vest in the  
commis-  
sioners, etc.

94. And be it further enacted, that upon payment of the principal money and interest due on any mortgage as aforesaid into the Bank of England, at the end of six calendar months from the day of giving such notice as aforesaid, for the use of the mortgagee or mortgagees, the cashier or cashiers of the bank shall give a receipt or receipts for the said money, in like manner as is hereinbefore directed in cases of other payments into the bank; and thereupon all the estate, right, title, interest, use, trust, property, claim and demand of the said mortgagee or mortgagees, and of all and every person or persons in trust for him, her, or them, shall vest in the said commissioners or trustees or other persons as aforesaid, and they shall be deemed to be in the actual possession of the premises comprised in such mortgage or mortgages, to all intents and purposes whatsoever.

Moneys to be  
paid or  
tendered  
before any  
use made of  
the premises.

95. And be it further enacted, that all sums of money, or other consideration, recompense, or satisfaction, to be paid or made pursuant to any such agreement or verdict as aforesaid, or in discharge of any such mortgage, shall be paid or tendered to the party or parties entitled to the same, or paid into the Bank of England as aforesaid, before the said commissioners or trustees or other persons as aforesaid, or any person or persons authorised by them, shall proceed to pull down any house or houses, or other erections or buildings comprised in or affected by such agreement, verdict, or mortgage respectively, or to use the ground for any purposes before mentioned in this Act.

Estates may  
be sold, the  
persons of  
whom they  
were bought  
having the  
first offer.

96. And be it further enacted, that it shall and may be lawful to and for the said commissioners or trustees or other persons as aforesaid, from time to time absolutely to sell and dispose of all or any of the freehold or leasehold estates, lands, houses, hereditaments, and premises which shall hereafter be conveyed to them in pursuance of this Act, or otherwise: Provided that the said freehold or leasehold estates, lands, houses, hereditaments, and

## Appendix.

premises so purchased are first offered for sale to the respective person or persons of or from whom the premises respectively were purchased by or on behalf of the said commissioners or trustees or other persons as aforesaid; and if such person or persons respectively shall not then and thereupon agree (except with respect to and on account of the price thereof as herein-after mentioned), or shall refuse (except with respect to and on account of the price thereof) to purchase the same respectively an affidavit shall be made and sworn before a master in the High Court of Chancery, or before one of his Majesty's justices of the peace for the city, borough, or county wherein such parochial or other district shall be situate (who are hereby respectively empowered and directed to take the same), by some person or persons uninterested in the said freehold or leasehold estates, lands, houses, hereditaments, or premises, stating that such offer was made by or on the behalf of the said commissioners or trustees or other persons as aforesaid, and that such offer was not then and thereupon agreed to, or was refused by the person or persons to whom the same was so offered; and that any such affidavit shall in all courts whatsoever be sufficient evidence and proof that such offer was made, and was not agreed to, or was refused by the person or persons to whom such offer was made, as the case may be; and in case such person or persons shall be desirous of repurchasing the same, and he, she, or they, and the said commissioners or trustees or other persons as aforesaid, shall differ and not agree with respect to the price thereof, then the price or prices thereof shall be ascertained by a jury, in the manner hereinbefore directed with respect to the disputed value of premises to be purchased by the said commissioners or trustees or other persons as aforesaid in pursuance of this Act; and the expense of hearing and determining such differences shall be borne and paid in like manner as is hereinbefore directed with respect to such purchase made by the said commissioners or trustees or other persons as aforesaid (*mutatis mutandis*); and the money to arise by the sale or sales which may be made by the said commissioners or trustees or other persons as aforesaid, of such freehold or leasehold estates, lands, houses, hereditaments, and premises, shall be applied by the said commissioners or trustees or other persons as aforesaid to the purposes of the local Act or Acts of Parliament relating to the parochial or other division over the pavement whereof they shall possess a control, or to the purposes of this Act, but the purchaser or purchasers thereof shall not be answerable or accountable for any misapplication or nonapplication of the money paid by him or them for such freehold or leasehold estates, lands, houses, hereditaments, and premises.

## THE METROPOLIS MANAGEMENT ACT, 1855.

(18 &amp; 19 VICT. C. 120.)

*An Act for the better Local Management of the Metropolis.*

[14th August 1855.]

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By s. 68, the sewers, with the exception of the main sewers, were vested in the vestries and district boards, and the main sewers were vested in the Metropolitan Board of Works (s. 135).

Throughout this Act for the Metropolitan Board of Works read now the London County Council, and for vestry and Board of Works read borough council.

69. The vestry of every parish mentioned in Schedule (A.) to this Act, Vestries and  
and the Board of Works for every district mentioned in Schedule (B.) to district  
this Act, shall (subject to the powers by this Act vested in the Metropolitan boards to  
repair, etc.,

**Appendix.**

all sewers vested in them, and from time to time to construct new ones, etc.

Board of Works) from time to time repair and maintain the sewers under this Act vested in them, or such of them as shall not be discontinued, closed up, or destroyed under the powers herein contained, and shall cause to be made, repaired, and maintained such sewers and works, or such diversions or alterations of sewers and works, as may be necessary for effectually draining their parish or district, and shall cause all banks, wharves, docks, or defences abutting on or adjoining any river, stream, canal, pond, or watercourse in such parish or district, to be raised, strengthened, or altered or repaired, where it may be necessary so to do for effectually draining, or protecting from floods or inundation such parish or district; and it shall be lawful for any such vestry or district board to carry any such sewers or works through, across, or under any turnpike road, or any street or place laid out as or intended for a street, or through or under any cellar or vault which may be under the pavement or carriageway of any street, and into, through, or under any lands whatsoever, making compensation for any damage done thereby, as hereinafter provided; and it shall be lawful for any such vestry or district board from time to time to enlarge, contract, raise, lower, arch over, or otherwise improve or alter all or any of the sewers, watercourses, and works which shall be from time to time vested in them or subject to their order and control, and to discontinue, close up, or destroy such of them as they may deem to have become unnecessary: Provided always, that no new sewer shall be made without the previous approval of the Metropolitan Board of Works: Provided also, that the discontinuance, closing up, destruction, or alteration of any sewer as aforesaid shall be so done as not to create a nuisance; and if by reason thereof any person shall be deprived of the lawful use of any covered sewer, it shall be the duty of the vestry or district board to provide some other sewer, or a drain as effectual for his use as the sewer of which he is so deprived: Provided also, that where the vestry or district board alter any sewer, or provide a new sewer in substitution for a sewer discontinued, closed up, or destroyed, they may contract or otherwise alter the private drains communicating with the sewer so altered, or with the sewer so discontinued, closed up, or destroyed, or may close up or destroy such private drains, and provide new drains in lieu thereof, as the circumstances of the sewerage may appear to them to require, but so that in every case the altered or substituted drain shall be as effectual for the use of the person entitled thereto as the drain previously used.

By s. 58 of the Metropolis Management Act, 1862, vestries and local boards may continue the sewers outside the limits of the metropolis.

So much of this section and of s. 70 as related to flood works and banks was to cease to be in force after the passing of the Thames River Prevention of Floods Act, 1879, *post*. See s. 43.

Where works done or required with any ancient mill, etc., compensation to be made, or rights therein purchased.

86. Provided also, that where any work by any vestry or district board done or required to be done in pursuance of the provisions of this Act interferes with or prejudicially affects any ancient mill, or any right connected therewith, or other right to the use of water, full compensation shall be made to all persons sustaining damage thereby, in manner hereinafter provided, or it shall be lawful for the vestry or board, if they think fit, to contract for the purchase of such mill, or any such right connected therewith, or other right to the use of water; and the provisions of this Act with respect to the purchases by the vestry or board hereinafter authorised shall be applicable to every such purchase as aforesaid.

The earlier part of this section as to cleansing ditches has been repealed and re-enacted with additions in s. 43 of the Public Health (London) Act, 1891, *post*.

119. If any porch, shed, projecting window, step, cellar door or window, sign, sign post, sign iron, showboard, window shutter, wall, gate, fence, or opening, or any other projection or obstruction placed or made against or in front of any house or building after the commencement of this Act shall be an annoyance, in consequence of the same projecting into or being made in or endangering or rendering less commodious the passage along any street in their parish or district, it shall be lawful for the vestry or district board to give notice in writing to the owner or occupier of such house or building to remove such projection or obstruction, or to alter the same in such manner as the vestry or board think fit; and such owner or occupier shall within fourteen days after the service of such notice upon him remove such projection or obstruction, or alter the same in the manner directed by the vestry or board; and if the owner or occupier of any such house or building neglect or refuse within fourteen days after such notice to remove such projection or obstruction, or to alter the same in the manner directed by the vestry or board, he shall forfeit any sum not exceeding five pounds, and a further sum not exceeding forty shillings for every day during which such projection or obstruction continues after the expiration of such fourteen days from the time when he may be convicted of any offence contrary to the provisions hereof.

**Appendix**

Owners, etc., to remove future projections, on notice from vestry or district board.

Penalty for neglect.

120. It shall be lawful for every vestry and district board, if any projection or obstruction which has been placed or made against or in front of any house or building in any such street (a) before the commencement of this Act shall be an annoyance as aforesaid, to cause the same to be removed or altered as they think fit: Provided always, that the vestry or board shall give notice in writing of such intended removal or alteration to the owner or occupier against or in front of whose house or building such projection or obstruction shall be, seven days before such removal or alteration shall be commenced, and shall make reasonable compensation to every person who shall incur any loss or damage by such removal, excepting in cases where the obstruction or projection may now be removable under any Act, in which case no compensation shall be made.

Vestry or district board may remove existing projections, and make compensation for the same.

(a) That is a street within their parish or district.

A piece of land in front of houses between a footway and carriageway used by the public, but also by the occupiers of the houses, was held not to be a street within the meaning of these sections (*Le Nere v. Vestry of Mile End Old Town* (1858), 27 L. J. Q. B. 208).

These sections have been held to repeal impliedly 57 Geo. 3, c. xxix., s. 72. See *Fortesene v. St. Matthew, Bethnal Green*, [1891] 2 Q. B. 170. Cf. *St. Mary, Islington v. Goodman* (1889), 23 Q. B. D. 154.

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### *Duties and Powers of Metropolitan Board of Works.*

135. The sewers mentioned in Schedule (D.) to this Act, being the main sewers now vested in the Commissioners of Sewers of the city of London and in the Metropolitan Commissioners of Sewers respectively, with the walls, defences, banks, outlets, sluices, flaps, penstocks, gullies, grates, works, and things thereunto belonging, and the materials thereof, with all rights of way and passage used and enjoyed by such commissioners respectively over and to such sewers, works, and things, and all other rights concerning or incident to such sewers, works, and things, shall be vested in the Metropolitan Board of Works; and such Board shall make such sewers and works as they may think necessary for preventing all or any part of the sewage within the metropolis from flowing or passing into the river Thames in or near the metropolis . . . (a) and shall also make all such other

Main sewers vested in the Metropolitan Board of Works, and power to such board to make sewers.

**Appendix**

sewers and works, and such diversions or alterations of any existing sewers or works vested in them under this Act, as they may from time to time think necessary for the effectual sewerage and drainage of the metropolis, and shall discontinue, close up, or destroy such sewers for the time being vested in them under this Act as they may deem unnecessary; and such Board shall from time to time repair and maintain the sewers so vested in them, or such of them as may not be discontinued, closed up, or destroyed as aforesaid; and for the purposes aforesaid such Board shall have full power and authority to carry any such sewers or works through, across, or under any turnpike road, or any street or place laid out as or intended for a street, as well beyond as within the limits of the metropolis, or through or under any cellar or vault under the carriageway or pavement of any street, and into, through, or under any lands whatsoever within or beyond the said limits, making compensation for any damage done thereby, as hereinafter provided; and all sewers and works from time to time made by the said Board shall vest in them; and the said Board shall cause the sewers vested in them to be constructed, covered, and kept so as not to be a nuisance or injurious to health, and to be properly cleared, cleansed, and emptied, and for the purpose of clearing, cleansing, and emptying the same they may construct and place, either above or under ground, such reservoirs, sluices, engines, and other works as may be necessary, and may cause the sewage and refuse from such sewers to be sold or disposed of as they may see fit, but so as not to create a nuisance, and the money arising thereby shall be applied towards defraying the expenses of such Board.

(a) Words omitted have been repealed.

*Compensation.*—The compensation is to be assessed and recovered as provided by ss. 225 and 226, *post*, and the principles, and to a large extent the procedure, laid down under the Lands Clauses Acts are adopted. See the notes to ss. 63 and 68 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 96, 110, for the principles of compensation when lands are taken or injuriously affected. The erection of a hoarding in a street while sewers are being made which renders access to premises less convenient, gives no ground for compensation (*Herring v. Metropolitan Board of Works* (1865), 34 L. J. C. P. 224).

In making and laying sewers under this Act, it is not necessary for the authority to purchase the land before proceeding to carry out the works; they may enter upon the land and construct the works. See the notes to the Public Health (Support of Sewers) Act, 1883, *ante*, p. 495, and *Peters v. Carson* (1844), 7 M. & G. 548; *Lister v. Lobley* (1837), 7 Ad. & E. 124; *North London Rail. Co. v. Metropolitan Board of Works* (1859), 28 L. J. Ch. 909. This power is not controlled by the power to purchase land given by ss. 150—153, *post* (*Hughes v. Metropolitan Board of Works* (1861), 9 W. R. 517).

If a sewer is properly constructed and managed there is no remedy for subsequent damage to adjoining land by flooding (*Hammond v. Vestry of St. Pancras* (1874), L. R. 9 C. P. 316; *Dixon v. Metropolitan Board of Works* (1881), 7 Q. B. D. 418). If there has been negligence, the remedy will be by action.

If support is required for a sewer from adjacent lands, it was held that compensation should be made in respect thereof before such a right can be acquired (*Metropolitan Board of Works v. Metropolitan Rail. Co.* (1868), L. R. 3 C. P. 612).

Under the rule laid down in *In re Corporation of Dudley* (1881), 8 Q. B. D. 86, it will probably be presumed that such support is conferred by statute and that the landowner has a remedy by claiming compensation, but that he will be liable for damages if he injure the sewer. See *Normanton Gas Co. v. Pope* (1883), 32 L. J. Q. B. 629, and see notes to the Public Health (Support of Sewers) Act, 1883, *ante*, p. 495.

The Metropolitan Management Act, 1858 (21 & 22 Vict. c. 104), s. 2, extended the powers of this section so as to enable the council to erect works on the bed of the Thames, with the consent of the Admiralty. See *Brownlow v. Metropolitan Board of Works* (1864), 33 L. J. C. P. 233.

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## Appendix.

*Auxiliary Powers common to the Metropolitan Board of Works and to Vestries and District Boards.*

150. It shall be lawful for the Metropolitan Board of Works and every district board and vestry to purchase, or to take on lease for such term as they may think fit, any land, or any right or easement in or over any land which they may deem necessary or expedient for the formation or protection of any works which they are authorised to execute under this Act, also any offices and other buildings, yards, stations, or places for deposit of refuse, materials, and things, or any land for the erection and formation of such offices and other buildings, yards, stations, or places for deposit; and also to contract for the purchase, removal, or abatement of any milldam, pound, weir, bank, wall, lock, or other obstruction to the flow of water, whereby sewerage or drainage is interrupted or impeded, and for the purchase of any land, or any right or easement in or over any land, which it may be necessary or expedient to purchase to prevent the obstruction of sewerage or drainage; and also to purchase or take on lease as aforesaid the whole or any part of any streams or springs of water, or any rights therein, which appears to them necessary to acquire and use for the purposes of cleansing sewers and drains, and the other purposes of this Act, or any land which is deemed by them advisable to purchase or take on lease for the purpose of drawing or obtaining water from springs, or by sinking of wells, and for making and providing reservoirs, tanks, aqueducts, watercourses, and other works, or for any other purpose connected with the works for obtaining such supply of water as aforesaid: Provided always, that nothing herein contained shall authorise the said Metropolitan Board, or any district board or vestry, to use or permit to be used any such works for the purpose of carrying water by supply pipes into any house or factory for domestic, manufacturing, or commercial purposes.

The council may also purchase lands for making roads and accommodation works; see Metropolitan Management Act, 1862, *post*.

151. For the purpose of enabling the said Metropolitan Board, and every district board and vestry, to obtain any land, or any right or easement in or over any land, which they respectively may require for the purposes of this Act, the Lands Clauses Consolidation Act, 1845, except the provisions of that Act with respect to the recovery of forfeitures, penalties, and costs, shall, subject to the provisions herein contained, be incorporated with this Act; and the provisions of the said Act so incorporated with this Act which would be applicable in the case of a purchase of any land shall be applicable in the case of the purchase of a right or easement in or over any land; and for the purposes of this Act the expression "the promoters of the undertaking," wherever used in the said Lands Clauses Consolidation Act, shall mean the Metropolitan Board, or the district board or vestry, acting under the provisions of the said Act and this Act, as the case may be.

152. Provided always, that the provisions of the said Lands Clauses Consolidation Act "with respect to the purchase and taking of lands otherwise than by agreement" shall not be incorporated with this Act, save for enabling the Metropolitan Board of Works to take land, or any right or easement in or over land, for the purpose of making any sewers or works for preventing the sewage or any part of the sewage within the metropolis from passing into the Thames in or near the metropolis, or otherwise for the purpose of the sewerage or drainage of the metropolis: Provided also, that no land, or right or easement in or over land, for the purposes afore-

Power to boards and vestries to purchase lands, etc., for the purposes of this Act.

Certain provisions of 8 & 9 Vict. c. 18 incorporated with this Act.

Lands not to be taken compulsorily, except by Metropolitan Board with consent of Secretary of State.

**Appendix.** said, shall be taken compulsorily by the said board, without the previous consent in writing of one of her Majesty's principal Secretaries of State.

Previous notice to be given.

153. The Metropolitan Board of Works, before applying for the consent of the Secretary of State for taking land, or any right or easement in or over land, compulsorily, as aforesaid, shall publish, once at the least in each of four consecutive weeks, in one of the daily newspapers published in the metropolis, an advertisement describing the nature of the works in respect of which the land, right, or easement, is proposed to be taken, naming a place where a plan of the proposed works is open for inspection at all reasonable hours, and stating the quantity of land or the particulars of the right or easement that they require for the purpose of such works, and shall serve a notice on the owners or reputed owners, lessees, or reputed lessees, and occupiers, of the land intended to be taken, or of the land in or over which such right or easement is intended to be taken, such service to be made four weeks previously to the application to such Secretary of State; and such notice shall state the particulars of the land, right, or easement so required, and that the Metropolitan Board are willing to treat for the purchase thereof, and as to the compensation to be made for the damage that may be sustained by reason of the proposed works.

The effect of these notices is not clear, nor does it appear whether they are to take the place of a notice to treat under s. 18 of the Lands Clauses Act, 1845, *ante*, p. 28. If they are similar to the notices to be served before applying for a provisional order as under s. 176 of the Public Health Act, 1875, *ante*, p. 457, they would have no effect upon the legal right of the parties. On the other hand, if the Secretary of State gives his consent, they may be regarded as having the same effect as a notice to treat (*cf. Birch v. Vestry of St. Marylebone* (1869), 20 L. T. (N.S.) 697, and *Burges v. Bristol Sanitary Authority* (1886), 50 J. P. 455).

Power to dispose of lands or property not wanted.

154. The Metropolitan Board of Works, and any district board or vestry, [may sell and dispose of any land purchased by them under this Act, and any property whatsoever vested in them under this Act, which it may appear to them may be properly sold or disposed of; and for completing and carrying any such sale of any land into effect such board may make and execute a conveyance of the land sold and disposed of as aforesaid unto the purchaser, or as he shall direct, and such conveyance shall be under the seal of the said board or vestry; and the word "grant" in such conveyance shall have the same operation as by the Lands Clauses Consolidation Act, 1845, is given to the same word in a conveyance of lands made by the promoters of the undertaking; and a receipt under the seal of the said board or vestry shall be a sufficient discharge to the purchaser of any such land or any other such property as aforesaid for the purchase money in such receipt expressed to be received; and the money arising from such sale of any land purchased under this Act, and (except as hereinafter otherwise provided) of any such property, shall be applied in aid of the rate out of which the expenses of the purchase of such land or providing such property have been or are authorised to be defrayed under this Act; and the money arising from the sale of any property vested in any such board or vestry under this Act, and which, before becoming so vested, was vested in any commissioners or other body, or in any officer of any commissioners or other body, or in any surveyor of highways, shall be applied in or towards the discharge of any debts or liabilities for the discharge whereof rates are by this Act authorised to be raised in the parish, or part, to the commissioners or other body for the management of the paving, lighting, or cleansing whereof such property may have belonged before the commencement of this Act, and, subject as aforesaid, shall be applied in aid of such rate to be raised under this Act in such parish or part as to the board or vestry disposing of such property may seem just; and any such board or vestry] may let any land purchased by or vested in them under this

Act, and which for the time being is not required for the purposes thereof, **Appendix.**  
in such manner and on such terms as such board or vestry may see fit.

The words in italics have been repealed except in so far as the section applies to the Metropolitan Board of Works (London Government Act, 1899 (62 & 63 Vict. c. 4)).

155. Provided always, that where any land or any right or easement in or Owners of  
over land is purchased by the said Metropolitan Board, or any district board land may on  
or vestry, under this Act, it shall be lawful for the owners of or parties sale reserve a  
entitled to sell or convey such land, right, or easement to reserve upon the right of  
sale thereof to such board or vestry, in and by the conveyance, such right or pre-emption.  
pre-emption to the person for the time being entitled to the land (if any)  
from which the land so purchased was severed, or in or over which such  
right or easement is granted, as is provided by sections one hundred and  
twenty-eight, one hundred and twenty-nine, and one hundred and thirty of  
the said Lands Clauses Consolidation Act; but, except where such right or  
pre-emption is so reserved, there shall be no such right, notwithstanding the  
incorporation of the said Lands Clauses Consolidation Act with this Act.

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### *Appeals.*

211. Any person who deems himself aggrieved by any order of any Power to  
vestry or district board in relation to the level of any building, or any appeal  
order or Act of any vestry or district board in relation to the con- against orders  
struction, repair, alteration, stopping or filling up, or demolition of any and acts of  
building, sewer, drain . . . may, within seven days after notice of any vestries and  
such order to the occupier of the premises affected thereby, or after such district  
Act, appeal to the Metropolitan Board of Works against the same; and boards in  
all such appeals shall stand referred to the committee appointed by such construction  
board for hearing appeals, as herein provided; and such committee shall hear of works.  
and determine all such appeals, and may order any costs of such appeals to  
be paid to or by the vestry or district board by or to the party appealing,  
and may, where they see fit, award any compensation in respect of any act  
done by any such vestry or district board in relation to the matters afore-  
said: Provided, that no such compensation shall be awarded in respect of  
any such act which may have been done under any of the provisions of this  
Act on any default to comply with any such order as aforesaid, unless the  
appeal be lodged within seven days after notice of such order has been given  
to the occupier of the premises to which the same relates.

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225. In every case where the amount of any damage, costs, or expenses is Compensation,  
by this Act directed to be ascertained or recovered in a summary manner, or damage,  
the amount of any damage, costs, or expenses is by this Act directed to be and expenses,  
paid, and the method of ascertaining the amount or enforcing the payment how to be  
thereof is not provided for, such amount shall, in case of dispute, be ascer- ascertained  
tained and determined by and shall be recovered before two justices; and and  
the amount of any compensation to be made under this Act by the said recovered.  
Metropolitan Board, or any vestry or district board, shall, unless herein  
otherwise provided, be settled, in case of dispute, by and shall be recovered  
before two justices, unless the amount of compensation claimed exceed fifty  
pounds, in which case the amount thereof shall be settled by arbitration,  
according to the provisions contained in the Lands Clauses Consolidation  
Act, 1845, which are applicable where questions of disputed compensation  
are authorised or required to be settled by arbitration (a).

(a) Sections 25—37, *ante*, pp. 53 *et seq.*

**Appendix.**

Method of proceeding before justices in questions of damages, etc.

**226.** Where the amount of any compensation, or of any damage, costs, or expenses, is to be determined by or to be recovered before two justices, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before two justices, at a time and place to be named in such summons; and upon the appearance of such parties, or, in the absence of either of them, upon proof of due service of the summons, it shall be lawful for such two justices to hear and determine the matter, and for that purpose to examine such parties, or any of them, and their witnesses, on oath, and make such order, as well as to costs as otherwise, as to them may seem just.

As to proceedings before justices, see the notes to ss. 22, 24 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 48, 52.

A metropolitan magistrate can exercise the powers of two justices (2 & 3 Vict. c. 71, s. 14).

The method of settling compensation provided in these sections is followed in the later statutes, as, for example, the Public Health (London) Act, 1891, s. 43, *post*; the London Building Act, 1894, ss. 15 and 23. In the Metropolis Management (Thames River Prevention of Floods) Act, 1879, *post*, a different method is provided.

Proceedings not to be quashed for want of form.

**230.** No Act, order, or proceeding in pursuance of this Act, or in relation to the execution thereof, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts, except as herein specially provided.

This is subject to the qualification that a writ of *certiorari* will lie if the court has acted without jurisdiction. See s. 145 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 272, and notes thereto.

## THE METROPOLIS MANAGEMENT ACT, 1862.

(25 & 26 VICT. C. 102.)

*An Act to amend the Metropolis Local Management Acts.* [7th August 1862.]

Power to Metropolitan Board to take lands for roads, etc.

**22.** The compulsory powers of taking land given to the said Metropolitan Board (a) by the firstly recited Act (b), and the Lands Clauses Consolidation Act, 1845, shall, subject to the conditions and restrictions in the firstly-recited Act contained, extend and be applicable to the taking of any lands which they may require for the purpose of making convenient roads or ways to or in connection with any sewers or works vested or hereafter to be vested in the said Board, or which they may require for making roads or ways during the construction of any sewerage works, or for spoil banks or places of deposit of surplus earth or other materials in the execution of any such works.

(a) The London County Council.

(b) That is, the Metropolis Management Act, 1855, ss. 150—155, *ante*, p. 733.

Formation and maintenance of bridges, arches, culverts, etc.

**25.** It shall be lawful for the said Metropolitan Board to make and maintain any bridges, arches, culverts, passages, or roads over, under, or by the sides of or leading to or from any sewerage works constructed or to be constructed by them, which they may deem necessary and convenient for preserving the communications between lands through which the said works may have been or may be made or carried: Provided that it shall be lawful

for the said Board to contract and agree with the owners and occupiers of lands to pay them or any of them compensation in lieu of making or maintaining such bridges or other works. **Appendix**

These are accommodation works similar to what are required under the Railways Clauses Consolidation Act, 1845, *ante*, p. 320, which Act is not incorporated with this one. By s. 24 the county council are bound to maintain these works.

32. Whereas it is in and by the firstly-recited Act provided that the Metropolitan Board of Works shall from time to time, in order to secure the efficient maintenance of the main and general sewerage of the metropolis, make such general or special orders as to them may seem proper for the guidance, direction, and control of the vestries of parishes and district boards in the levels, construction, alteration, maintenance, and cleansing of sewers in their respective parishes or districts, and for securing the proper connection and intercommunication of the sewers of the several parishes and districts, and their communications with the main sewers vested in the said Metropolitan Board, and generally for the guidance, direction, and control of vestries and district boards in the exercise of their powers and duties in relation to sewerage; and all such orders shall be binding upon such vestries and boards: Be it enacted, that whenever the said Metropolitan Board shall, in exercise of the said power, have ordered that any sewer or sewers vested in the vestry, district board, or other body acting for any parish or place comprised in the schedules of the firstly-recited Act, having control over the sewers in one parish, district, or part, shall, for the purpose of outfall or otherwise, be connected with any sewer or sewers vested in the vestry or district board of another parish, district, or part, or other body having control over the sewers in such parish, district, or part, it shall be lawful for the vestry, district board, or other body, for the drainage of whose parish, district, or part such connection shall be required, and at whose instance and request such order shall have been made, to execute all necessary works as well within their own parish, district, or part, as within any other parish, district, or part which shall be specified in the said order of the Metropolitan Board for effecting such connection: Provided that every communication to be made by any vestry, district board, or other body with any sewer out of their own parish, district, or part, shall be made under the supervision and to the satisfaction of the board, vestry, or other body having control over such last-mentioned sewer; and where it shall appear to the said Metropolitan Board to be equitable and just, under the circumstances of the case, that any vestry, board, or other body so connecting their sewers with the sewers vested in another vestry, district board, or other body, should pay such last-mentioned vestry, board, or body any compensation or remuneration, either in one sum or by yearly or other payments, for the use of their sewer, it shall be lawful for the said Metropolitan Board to order and direct payment of such compensation or remuneration accordingly; and the vestry, board, or other body to whom such payment shall be directed to be made may recover the same from the vestry, board, or body directed by such order to make such payment, either by action at law or before a justice of the peace in a summary manner.

34. Where any works authorised by this or the recited Acts will interfere with any railway or canal, the board or vestry proposing to construct such works shall before commencing the same give notice in writing of their intention so to do to the company owning such railway or canal, and shall, together with such notice, deliver a plan and section showing the nature of such interference; and if within seven days after the receipt of such notice

Plan, etc., of  
ing railways  
or canals to  
be submitted  
to companies.

**Appendix.** — the company shall by writing, addressed to the board or vestry, object to the manner in which it is intended to interfere with such railway or canal respectively, on account of the probable interruption or endangering of the traffic thereon, the same works shall not be commenced ; and it shall thereupon be referred to an engineer, to be appointed by the Board of Trade, on the application of either party, to determine the manner of executing the said works ; and the determination come to by such engineer shall be binding on both parties.

This section restricts the powers given by ss. 69, 135 of the Metropolis Management Act, 1855, which allows sewers to be made upon any land.

**Level of railway not to be altered.** 35. Provided always, that it shall not be lawful for any board or vestry to alter the level of any railway or canal, unless with the consent of the company owning the same respectively, or, if that be refused with the consent of the Board of Trade ; and provided also, that nothing in this Act contained shall take away or affect the right of any railway or canal company to compensation for the taking or injuriously affecting of any land or property of such company, or for or by reason of the interruption of any traffic on their railway or canal, or for any damages, costs, or expenses which such company may be required to pay in consequence of such interruption.

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## THE METROPOLITAN COMMONS ACT, 1866.

(29 & 30 VICT. C. 122.)

*An Act to make provision for the improvement, protection, and management of commons near the Metropolis.* [10th August 1866.]

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**Estates or rights not to be taken away or affected, except by consent, without compensation under Lands Clauses Act.**

15. No estate, interest, or right of a profitable or beneficial nature in, over, or affecting a common shall, except with the consent of the person entitled thereto, be taken away or injuriously affected by any scheme, without compensation being made or provided for the same ; and such compensation shall, in case of difference, be ascertained and provided in the same manner as if the same compensation were for the compulsory purchase and taking or the injurious affecting of lands under the provisions of the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860.

This Act which has been amended by the Metropolitan Commons Acts of 1869, 1878, and 1898 (61 & 62 Vict. c. 43), enables the local authority—the county council, or borough council—to prepare a scheme for the management, draining, levelling, and improvement of commons within the metropolitan police district. The scheme is to state the rights of persons affected. It has been held that the right to a sign post to a public-house and to maintain and repair it was a beneficial right within the meaning of this section (*Hoare v. Metropolitan Board of Works* (1874), L. R. 9 Q. B. 296). As to the right of the lord of the manor to dig gravel, see *Attorney-General v. Tyssen-Amherst*, in the Times, April 2nd, 1879. The confirmation of a scheme acts as a bar to any claims by an owner of land included in the scheme (*Cook v. Conservators of Mitcham Common*, [1901] 1 Ch. 387).

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Appendix.

METROPOLIS MANAGEMENT (THAMES RIVER PREVENTION OF FLOODS) AMENDMENT ACT, 1879.

(42 & 43 VICT. C. CXCIII.)

*To amend the Metropolis Management Act, 1855, and the Acts amending the same, so far as relates to the protection of the Metropolis from floods and inundations caused by the overflow of the river Thames and for other purposes.* [11th August 1879.]

2. In the construction of this Act the following words and expressions have the following meanings, unless excluded by the subject or context ; (that is to say,) Interpretation of terms. 19 & 20 Vict. c. 112.

The expression "the principal Act" means the Metropolis Management Act, 1855, as amended by the Metropolis Management Amendment Act, 1856, and the Metropolis Management Amendment Act, 1862 : c. 112. 25 & 26 Vict. c. 102.

The expression "the Secretary of State" means one of her Majesty's Principal Secretaries of State :

The expression "the Board" means the Metropolitan Board of Works :

The expression "person" includes any corporation, whether aggregate or sole :

The expression "river Thames" includes the rivers, streams, and water-courses within the flow and re-flow of the tides of the said river within the limits of this Act :

The expression "bank" and the expression "dam" includes any bank, wall, fence, wharf, dock, lock, gate, sluice, dam, or defence, or appliance, whether of a movable, temporary, fixed, or permanent character, for the protection of lands within the limits of this Act from floods or inundations caused by the overflow of the river Thames :

The expression "flood works" means the entire or partial construction, alteration, reconstruction, in the same or any altered position of any bank, and the repairing, raising, strengthening, improvement, or removal of any bank, and the enlargement, contraction, raising, lowering, arching over, improvement, or alteration of any sewer, channel, or watercourse, and the discontinuance, closing up, or destruction of any such sewer, channel, or watercourse necessary for the protection of lands within the limits of this Act from floods or inundations caused by the overflow of the river Thames :

The expression "lands" includes messuages, buildings, erections, banks, lands, tenements, and hereditaments of any tenure and rights and easements in, over, under, or in respect of the same :

The expression "street," in addition to the meaning assigned to the same term by the principal Act, includes the carriageway of any turnpike road and any county bridge and any place laid out as a street :

The expression "premises" includes lands and streets :

The expression "owner" means (except where otherwise expressly provided) the person for the time being receiving the rackrent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent, and includes any commissioners, trustees, or other persons or person in whom the premises in connection with which the said word is used are vested, or who are charged with the control or management of the same.

**Appendix.**

Powers for  
execution of  
flood works.

14. The board, the Commissioners of Sewers of the city of London, the vestry of any parish, the board of works for any district, or any owner of premises, in the execution of any flood works, in accordance with the provisions of this Act, may carry the same through, along, across, or under any street, or through, along, across, or under any cellar or vault which may be under the pavement of any street, and into, through, along, across, upon, or under any lands, and may for such purpose enter upon any such cellar, vault, and lands, and any premises in the vicinity of or adjoining the same or connected therewith, compensation being made for any damage done thereby in manner provided by this Act.

Powers of  
board to  
take lands.

15. Where for the purposes of executing any flood works in accordance with the provisions of this Act it is in the opinion of the board necessary that the Commissioners of Sewers of the city of London, the vestry of any parish, the board of works for any district, or any owner of premises liable under this Act to provide for the execution of such works, should take and use any premises not vested in them or subject to their control or management, or of which they or he are or is not the owner, or that the board for the purpose of executing such works in place of them or him should take and use such last-mentioned premises, then and in every such case the board may take and use any such last-mentioned premises which may be required for the purpose of executing such works, and the board shall for such purpose have and may exercise all the powers of taking land conferred upon the board by the principal Act in relation to the taking of lands for works for the purpose of the sewerage or drainage of the metropolis.

8 & 9 Vict.  
c. 18.

For the purposes of notices required by the principal Act to be served upon owners or reputed owners of lands before applying for the consent of the Secretary of State to the taking of lands compulsorily, the term "owner" shall, in relation to premises to be taken for the purposes of this Act, have the same meaning as in the Lands Clauses Consolidation Act, 1845.

When the Board have taken any premises under the authority of this Act, they may by writing under their seal authorise the Commissioners of Sewers, the vestry of any parish, the board of works for any district, and any owner to take or use the same for the execution of any flood works in accordance with the provisions of this Act, and thereupon such commissioners, vestry, district board, or owner may for such purpose take and use such premises or any of them, and shall in respect of the same have all and the same powers as though they or he were or was the board.

Power to  
construct  
flood works  
on the shores  
and bed of  
the river  
Thames.  
20 & 21 Vict.  
c. cxlvii.

16. For the purpose of executing any works under the authority of this Act, the board, the Commissioners of Sewers of the city of London, the vestry of any parish, the board of works for any district, and any owner of premises liable to execute flood works, may, subject to the provisions of this Act, construct any such works through, along, over, or under the bed and soil and banks and shores of the river Thames: Provided always, that no such work shall be constructed in or upon the bed or shore of the river Thames as defined by the Thames Conservancy Act, 1857, except with the permission of the conservators of the said river, and under a license to be granted by the said conservators in accordance with the provisions of the said last-mentioned Act.

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Power to  
inspect lands.

18. For the purpose of giving effect to the provisions of this Act, any engineer, surveyor, district surveyor, or other person duly authorised in writing by the board or by the Commissioners of Sewers of the city of London, or by the vestry of any parish, or by the board of works for any district, or by any owner of premises liable to execute flood works, or the owner of such premises, may enter upon any premises upon which any

works executed or to be executed by them or him in pursuance of this Act are or will be situate, for the purpose of inspecting or taking surveys of the same, at any time between the hours of nine o'clock in the forenoon and four o'clock in the afternoon ; and if any person during such hours refuses to allow such engineer, surveyor, district surveyor, or other officer or person, or any such owner, to enter upon any such premises, or obstructs him in the making of such inspection or survey, such person shall be liable to a penalty not exceeding ten pounds, and to a further penalty not exceeding five pounds for every day after the first day during which he so continues to act in contravention of this Act.

**Appendix.**

#### COMPENSATION.

25. Any person or body who claims compensation for any damage caused by the execution of any flood works under the authority of this Act, or in respect of any lands or any interest in lands taken or used for the purposes of or injuriously affected by the execution of flood works under the authority of this Act, may claim such compensation from the board ; and if such person or body and the board do not agree with respect to such claim, then, and in every such case the validity of such claim and the amount of such compensation (if any) payable in respect thereof shall, on the application of either party, be determined by arbitration by the standing arbitrator hereinafter referred to, subject to and in accordance with the provisions of this Act, and such provisions shall be in substitution for the provisions with respect to the tribunal for determining the settlement of questions of disputed compensation contained in the principal Act or any Act incorporated therewith, and the amount of compensation payable in respect of any such claim, when agreed upon or determined as aforesaid, shall be paid by the board as though the same were compensation payable in respect of lands taken under the authority of the principal Act : Provided always, that the owner or occupier of any lands shall not be entitled to any compensation on account of the execution by himself or by any other person or body of any flood works for which such owner is in pursuance of this Act liable to provide upon any lands of which he is the owner or occupier unless after the execution of such lands are permanently injuriously affected thereby, and then only to the extent of such permanent injury.

26. When any claim is made for compensation under the authority of this Act the standing arbitrator shall have power to decide upon the validity of such claim, and to determine what (if any) compensation shall be made to the person or body making such claim, and in adjudicating upon such claims the standing arbitrator shall have regard to the nature of the flood works with respect to which the claim has arisen, the manner in which the same have been executed, the benefit (if any) which has accrued or which may reasonably be expected to accrue to the person or body making such claim by reason of the execution of such works, and generally to all the circumstances of the case ; and the standing arbitrator may, in determining the compensation to be paid for any lands or interest in lands taken or injuriously affected under the authority of this Act, according as he shall think fit, include or exclude from such compensation an allowance in respect of the compulsory powers of this Act, and he may make such order as to the payment of the costs of such arbitration wholly or in part by the board or the claimant, as he shall think just.

27. For the purpose of determining the validity of claims for compensation and the amount of compensation payable in respect of any claim

Mode of ascertaining amount of compensation for damages caused by execution of flood works, etc.

Powers of standing arbitrator as to amount of compensation.

Appointment of standing arbitrator.

**Appendix.** declared to be valid by this Act directed to be settled by arbitration, there shall be an arbitrator, in this Act called the "standing arbitrator," appointing and acting as follows : (that is to say.)

- (1) The Secretary of State shall, before the 31st day of December in the year 1879, and before the same day of December in every third succeeding year, by writing under his hand appoint a standing arbitrator and fix the remuneration to be paid to him, and every person so appointed shall continue in office for three years from such 31st day of December in such years respectively :
- (2) Any standing arbitrator may be removed from his office by the Secretary of State by writing under his hand :
- (3) If any standing arbitrator during his term of office dies or resigns, or is removed from office, the Secretary of State shall in manner aforesaid, within one month after notice of his death or resignation or removal, appoint another person to be a standing arbitrator in his place, and the person so appointed shall continue in office as long only as the person in whose place he is appointed would have been entitled to continue in office :
- (4) The remuneration of the standing arbitrator shall be paid by the Board.

Before any standing arbitrator enters upon the duties of his office he shall, in the presence of a justice, make and subscribe the following declaration : (that is to say.)

"I, A. B., do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine all matters which may from time to time be referred to me under the provisions of the Metropolis Management (Thames River Prevention of Floods) Amendment Act, 1879.

A. B."

And if the standing arbitrator having made such declaration wilfully acts contrary thereto, he shall be guilty of a misdemeanor.

If any reference is pending before a standing arbitrator at the time when he resigns or goes out of office by effluxion of time, it shall nevertheless be proceeded with by him, and his decision shall have the like effect as if he had not resigned or gone out of office.

Proceedings  
before  
standing  
arbitrator.

28. The standing arbitrator shall appoint a place and time for the hearing of any matter coming before him, and shall cause six days' previous notice thereof to be given in such manner as he shall think proper, and at such place and time shall consider such matter and hear the parties appearing by themselves, their counsel, solicitors, or agents, and take evidence, and the standing arbitrator may administer an oath or affirmation (where an affirmation in lieu of an oath would be admitted in a court of justice) to any person before hearing any evidence from him, and may admit the affidavit or declaration of any person.

The standing arbitrator, on the application of any party, may by summons require the attendance before him of any person to be examined as a witness before him, and may, on the like application, by summons require any person to bring before him all books, papers, and writings in his possession, custody, or control relating to any matter to be inquired into by the standing arbitrator.

Every person so summoned shall attend the standing arbitrator and answer all questions touching the matter to be inquired into, and bring and produce all papers, books, and writings required according to the tenor of the summons ; and every such person not attending in obedience to such summons, or refusing to answer such questions, or failing to bring or produce such papers, books, and writings as aforesaid, shall be liable, if the

standing arbitrator shall so order, to a penalty not exceeding fifty pounds : **Appendix.**  
 Provided that any person so summoned shall not be bound to obey the summons unless a reasonable sum is first paid or tendered to him for his expenses.

If any person, on examination on oath or affirmation before the standing arbitrator, or in any affidavit or declaration used before the standing arbitrator, wilfully gives false evidence, he shall be deemed guilty of perjury.

In case any person fail to appear at the time and place appointed for the hearing of any matter by the standing arbitrator, the standing arbitrator may proceed with the hearing of such matter in the absence of such party.

The decision of the standing arbitrator in any arbitration under this Act shall be final and binding upon the parties to such arbitration.

No award made by the standing arbitrator in accordance with this Act shall be set aside for any irregularity or informality.

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## THE PUBLIC HEALTH (LONDON) ACT, 1891.

(54 & 55 VICT. C. 76.)

*An Act to consolidate and amend the Laws relating to Public Health in London.*  
 [5th August 1891.]

The Public Health Act, 1875, does not apply to London except certain sections which by this Act are made applicable. The authorities to carry out this Act are now the city and borough councils. The only sections which deal with compensation for injury to land appear to be ss. 43 and 44, which reproduce with additions ss. 86 and 88 of the Metropolis Management Act, 1855.

### 43.—(1) Every sanitary authority—

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| <p>(a) Shall drain, cleanse, cover, or fill up, or cause to be drained, cleansed, covered, or filled up, all ponds, pools, open ditches, drains, and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health which may be situate in their district ; and</p> <p>(b) Shall cause notice to be served on the person causing any such nuisance, or on the owner or occupier of any premises whereon the same exists, requiring him, within the time specified in such notice, to drain, cleanse, cover, or fill up such pond, pool, ditch, drain, or place, or to construct a proper drain for the discharge of such filth, water, matter, or thing, or to execute such other works as the case may require.</p> | <p>Sanitary authority to cause offensive ditches, drains, etc., to be cleansed or covered.</p> |
|---|--|

(2) If the person on whom such notice is served fails to comply therewith, he shall be liable to a fine not exceeding five pounds, and a further fine not exceeding forty shillings for each day during which the offence continues ; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and execute such works as may be necessary for the abatement of the nuisance, and may recover the expenses thereby incurred from the owner of the premises : Provided that—

- (a) The sanitary authority, where they think it reasonable, may defray all or any portion of the said expenses, as expenses of sewerage are to be defrayed by that authority ; and

**Appendix.**

18 & 19 Vict.  
c. 120.

(b) Where any work which a sanitary authority does or requires to be done in pursuance of this section interferes with or prejudicially affects any ancient mill, or any right connected therewith, or other right to the use of water, the sanitary authority shall make full compensation to all persons sustaining damage thereby, in manner provided by the Metropolis Management Act, 1855, or, if they think fit, may purchase such mill, or any such right connected therewith, or other right to the use of water; and the provisions of the said Act with respect to purchases by the sanitary authority shall be applicable to every such purchase as aforesaid (a).

(a) See s. 225 of the Metropolis Management Act, 1855, *ante*, p. 735.

(3) Any person who thinks himself aggrieved by any notice or act of a sanitary authority under this section in relation to the construction, covering, filling up, or other alteration of any drain, may appeal to the county council, whose decision shall be final.

Power to  
sanitary  
authority to  
provide  
public con-  
veniences.

44.—(1) Every sanitary authority may provide and maintain public lavatories and ashpits and public sanitary conveniences other than privies, in situations where they deem the same to be required, and may supply such lavatories and sanitary conveniences with water, and may defray the expense of providing such lavatories, ashpits, and sanitary conveniences, and of any damage occasioned to any person by the erection or construction thereof, and the expense of keeping the same in good order, as if they were expenses of sewerage.

(2) For the purpose of such provision the subsoil of any road, exclusive of the footway adjoining any building or the curtilage of a building, shall be vested in the sanitary authority.

"Sanitary convenience" includes urinals, waterclosets, earthclosets, privies, and any similar conveniences.

"Ashpit" means any ashpit, dust-bin, ash-tub, or other receptacle for the deposit of ashes or refuse matter.

Such conveniences cannot be erected in places where they will cause a nuisance (*Biddulph v. Vestry of St. George's, Hanover Square* (1863), 33 L. J. Ch. 411; *Vernon v. Vestry of St. James's, Westminster* (1880), 16 Ch. D. 449; *Sellers v. Mallock Bath Local Board* (1885), 14 Q. B. D. 928). There appears to be no provision for paying compensation to anyone in respect of the subsoil of roads. A mandatory injunction will be granted if the approaches to the urinal encroach upon the footway (*London and North Western Rail. Co. v. Westminster Corporation*, [1902] 1 Ch. 269).

## THE LONDON BUILDING ACT, 1894.

(57 & 58 VICT. C. CXXIII.)

*An Act to consolidate and amend the enactments relating to Streets and Buildings in London.* [25th August 1894.]

"Street."

18 & 19 Vict.  
c. 120, s. 250.  
25 & 26 Vict.  
c. 102, s. 112.

5. In this Act, unless the context otherwise requires—

(1) The expression "street" means and includes any highway and road, bridge, lane, mews, footway, square, court, alley, passage, whether a thoroughfare or not, and part of any such highway, road, bridge, lane, mews, footway, square, court, alley, or passage.

- (2) The expression "way" includes any public road, way, or footpath, not being a street, and any private road, way, or footpath which it is proposed to convert into a highway, or to form, lay out, or adapt as a street. **Appendix** — "Way."
- (3) The expression "roadway" in relation to any street or way means "Roadway." and includes the whole space open for traffic, whether carriage traffic and foot traffic or foot traffic only. 41 & 42 Vict. c. 32, s. 4.
- (4) The term "centre of the roadway" means—
- (a) In relation to any [street] or way of which the centre of the roadway has been ascertained or defined by the council or the superintending architect previously to or after the commencement of this Act the centre of the roadway as so ascertained and defined.
- (b) In relation to any street or way of which the centre of the roadway shall not have been ascertained or defined by the council or the superintending architect where the roadway opposite the site of the building in question shall, since the twenty-second day of July, one thousand eight hundred and seventy-eight, have been widened the centre of the roadway as existing immediately before the date of such widening or where it shall not have been so widened the actual centre of the existing roadway ;
- For the purpose of any enactment in this Act referring to the centre of the roadway [the superintending architect] may at any time define the line constituting the centre of the roadway in the case of a street formed or laid out after the eighteenth day of August, one thousand eight hundred and ninety, and the line so defined shall continue to be deemed the centre for such purpose, notwithstanding that the actual centre of the roadway may have become altered by reason of the roadway having been widened either on one side only or on both sides to an unequal extent.
- (5) The expression "the prescribed distance" means twenty feet from the centre of the roadway where such roadway is used for the purpose of carriage traffic, and ten feet from the centre of the roadway where such roadway is used for the purposes of foot traffic only. "Prescribed distance." 41 & 42 Vict. c. 34, s. 4.
- (6) The expression "new building" means and includes—
- Any building erected after the commencement of this Act ; "New building."
- Any building which has been taken down for more than half of its [cubical extent] and re-erected or commenced to be re-erected [wholly or partially on the same site] after the commencement of this Act ; 18 & 19 Vict. c. 122, s. 10.
- Any space between walls and buildings which is roofed or commenced to be roofed after the commencement of this Act.
- (15) The expression "external wall" means an outer wall or vertical enclosure of any building not being a party-wall. "External wall."
- [(24) The expression "cubical extent" applied to the measurement of a building means the space contained within the external surfaces of extent." its walls and roof and the upper surface of the floor of its lowest story.]

15. In any case where—

- (1) The council (a) under this part (b) of this Act make it a condition of their sanction to—
- (a) The formation or laying out of any street for carriage traffic over

**Appendix.**

land which either at the commencement of this Act or at any time within seven years previously has or shall have been occupied by buildings or by market gardens ; or

(b) The adaptation or use for carriage traffic of any street or way not previously so adapted or used

that the street or way shall be throughout or in any part of a greater width than forty feet ; or

(2) The council determine that the prescribed distance from the centre of the roadway shall be greater than twenty feet ;

the council shall be liable to pay to the owner of land or buildings required for such greater width or such greater prescribed distance compensation for the loss or injury (if any) sustained by him by such requirement. The amount of such compensation if not agreed within two months from the time of such condition being made or determination arrived at may (unless the council waive the condition or determination) be recovered in a summary manner, except where the amount of compensation claimed exceeds fifty pounds, in which case the amount thereof shall be settled by arbitration, according to the provisions contained in the Lands Clauses Acts, which are applicable where questions of disputed compensation are authorised or required to be settled by arbitration, and for that purpose those Acts so far as applicable shall be deemed to be incorporated with this Act :

Waiver of conditions.

Provided always, that within two months from the time of such condition or determination being made or arrived at, if the amount of compensation has not been settled before the expiration of such time, it shall be lawful for the council to waive such condition or determination. Provided also, that if the council waive such condition or determination they shall pay to the owner the reasonable costs, charges, and expenses incurred by him in consequence of such condition or determination, and in connexion with the negotiations for the settlement of the amount of compensation.

For the purpose of this section the expression "owner" has the same meaning as in the Lands Clauses Acts (c).

(a) The county council.

(b) Part 2. This section refers to the powers under ss. 12 and 13.

(c) See ss. 3 and 7 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 4 and 16.

The method of ascertaining the compensation is the same as is provided by s. 225 of the Metropolis Management Act, 1855, *ante*, p. 735. The arbitration clauses of the Lands Clauses Consolidation Act, 1845, are ss. 25—37, *ante*, pp. 53 *et seq.*

The statutory powers as to the line of buildings do not apply to certain buildings for public purposes authorised by Act of Parliament or provisional order (*City and South London Rail. Co. v. London County Council*, [1891] 2 Q. B. 513 ; *London County Council v. London School Board*, [1892] 2 Q. B. 606) ; but this depends upon the words of the special Act (*London County Council v. Wandsworth and Putney Gas Co.* (1900), 64 J. P. 500 ; *Grand Junction Waterworks Co. v. Hampton Urban District Council* (1899), 63 J. P. 503).

**23.**—(1) In case any building or structure which shall, in any part thereof, project beyond the general line of buildings in a street or beyond the front of the building wall or railway, on either side thereof shall at any time be taken down to an extent exceeding one-half of the cubical extent of such building or structure, or shall be destroyed by fire or other casualty, or demolished, pulled down or removed from any other cause to the extent aforesaid, it shall be lawful for the council to require the same building or structure, or any new building or structure proposed to be erected on the site, or any part of the site thereof to be set back to such a line, and in such manner as the council shall direct.

(2) The council shall make compensation to the owner of such building for any damage and expenses which he may sustain and incur thereby, and

the amount of such compensation if not agreed between the council and the parties concerned, shall be recovered in a summary manner, except where the amount of compensation claimed exceeds fifty pounds, in which case the amount thereof shall be settled by arbitration according to the provisions contained in the Lands Clauses Acts, which are applicable where questions of disputed compensation are authorised or required to be settled by arbitration, and for that purpose those Acts as far as applicable shall be deemed to be incorporated with this Act. For the purpose of this section the expression "owner" has the same meaning as in the Lands Clauses Acts.

The method of assessing the compensation is the same as in s. 15, *supra*, and s. 225 of the Metropolis Management Act, 1855, *ante*, p. 735. Compensation was given in respect of the same matter by s. 74 of the Metropolis Management Act, 1862, which is repealed by this Act.

## THE EDUCATION (LONDON) ACT, 1903.

(3 EDW. 7, c. 24.)

*An Act to extend and adapt the Education Act, 1902, to London.*

[14th August 1903.]

For the purposes of the acquisition of land, ss. 19—22 of the Elementary Education Act, 1870, *ante*, p. 451, will continue to apply. The following provision affects the compulsory provision of sites :

2.—(2) The site of any new public elementary school to be provided by the local education authority shall not be determined upon until after consultation with the council of the metropolitan borough in which the proposed site is situated, and in the case of compulsory purchase, if the council of the metropolitan borough does not concur in the proposed compulsory acquisition, the Board of Education shall not make the order authorising the purchase unless they are satisfied that the concurrence of the council of the borough should be dispensed with : Provided that, except in the case of compulsory acquisition, the site required for the enlargement of a public elementary school shall not be deemed to be a site required for a new public elementary school within the meaning of this sub-section.

(3) Schools provided by the local education authority for blind, deaf, epileptic, and defective children, and any other schools which, in the opinion of the Board of Education, are not of a local character, shall not be treated for the purposes of this section as public elementary schools.

Section 5 provides that this Act, except as expressly provided, shall come into operation on the appointed day, that day to be May 1st, 1904, or such other day not being twelve months later, as the Board of Education may appoint.

## PRECEDENTS.

[The precedents have been arranged as far as possible according to the order of the sections of the Lands Clauses Consolidation Act, 1845.]

No. 1.—FORMAL NOMINATION OF TWO SURVEYORS TO DETERMINE THE VALUATION OF LANDS PURCHASED AND TAKEN FROM ANY PERSON UNDER ANY DISABILITY OR INCAPACITY UNDER SECTION 9 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 21).

Whereas the                      company have in pursuance of the                      Act, 19                      , and the Acts incorporated therewith, agreed to purchase and take the lands and hereditaments described in the schedule hereto, and coloured red on the plan annexed to the said schedule. And whereas the said lands belong to *A. B.*, a party under disability or incapacity, and not having power to sell or convey such lands except under the provisions of the said Act, and the Acts incorporated therewith.

Now, therefore, the said company nominate *C. D.*, and the said *A. B.* nominates *E. F.*, two able practical surveyors, to determine the purchase-money and compensation to be paid for the said lands and hereditaments which under the said Act and the Acts incorporated therewith, the said *A. B.*, can sell and convey and the compensation for the permanent damage or injury to any other lands of the said *A. B.* held therewith.

Dated this                      day of                      .

(Signed)                      *A. B.*

Secretary to the company.

SCHEDULE AND PLANS.

No. 2.—NOTICE OF APPLICATION TO TWO JUSTICES UNDER SECTION 9 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845, TO APPOINT A SURVEYOR (*ante*, p. 21).

To the                      Company.

Whereas the two surveyors nominated by us in writing on the                      day of                      have failed to agree in a valuation of the amount of the purchase-money and compensation to be paid to me for the lands and hereditaments referred to in the said nomination, and of the compensation to be paid for any permanent damage or injury to any other lands held therewith. Now, therefore, I, *A. B.*, do in accordance with the powers of s. 9 of the Lands Clauses Consolidation Act, 1845, give you the                      Company notice that I intend on the                      day of                      at                      o'clock in the forenoon to apply at                      to two of his Majesty's justices to nominate and appoint a surveyor to determine the matters referred to the valuation of the two surveyors under our said nomination.

Dated the                      day of                      , 19                      .

(Signed)                      *A. B.*

## Appendix.

No. 3.—APPOINTMENT BY TWO JUSTICES OF THIRD SURVEYOR WHERE TWO SURVEYORS APPOINTED UNDER SECTION 9 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845, CANNOT AGREE (*ante*, p. 21).

Whereas application has been made to us, the undersigned *W. X.* and *Y. Z.*, being two of his Majesty's justices assembled and acting together at by *A. B.*, under s. 9 of the Lands Clauses Consolidation Act, 1845, to nominate and appoint a surveyor. And whereas it has been shown to us that the surveyors nominated by the \_\_\_\_\_ Company and the said *A. B.* cannot agree in a valuation of the amount of purchase-money or compensation to be paid to *A. B.* for his lands and hereditaments described in the said nomination, and the schedule thereto, and the amount of the compensation to be paid for any permanent damage or injury to any such lands. And that the said *A. B.* has given due notice to the \_\_\_\_\_ Company of this application. Now, therefore, we do nominate *C. D.* to be the third surveyor to make the said valuation.

Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, at \_\_\_\_\_  
(Signed) *W. X.*  
*Y. Z.*

No. 4.—DECLARATION IN WRITING OF THE CORRECTNESS OF THE VALUATION BY SURVEYOR OR SURVEYORS UNDER SECTION 9 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845, TO BE ANNEXED TO VALUATION (*ante*, p. 21).

We, *C. D.* and *E. F.*, the two surveyors nominated under s. 9 of the Lands Clauses Consolidation Act, 1845, and the \_\_\_\_\_ Act, 18 \_\_\_\_\_, by the \_\_\_\_\_ Company, and by *A. B.* to determine the purchase-money and compensation to be paid for the lands and hereditaments referred to in the schedule to the formal nomination dated the \_\_\_\_\_ day of \_\_\_\_\_, which under the said Act and the Acts incorporated therewith, the said *A. B.* can sell and convey, and also to determine the compensation for the permanent damage and injury to any such lands, having agreed to the valuation hereinbefore set out, do hereby in writing each severally declare the correctness of the said valuation, and have hereto subscribed our names.

Dated the \_\_\_\_\_ day of \_\_\_\_\_  
(Signed) *C. D.*  
*E. F.*

[If the two surveyors have differed, the surveyor nominated by the justices has to make and subscribe a similar declaration and annex it to his valuation. A similar declaration requires to be made under ss. 59 and 85 of the Lands Clauses Consolidation Act, 1845; see forms to s. 85, *post*.]

No. 5.—CERTIFICATE OF TWO JUSTICES THAT THE CAPITAL HAS BEEN SUBSCRIBED UNDER SECTION 17 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 28).

In pursuance of the \_\_\_\_\_ Railway Act, 19 \_\_\_\_\_, and section 17 of the Lands Clauses Consolidation Act, 1845, we, the undersigned *A. B.* and *C. D.*, being two of his Majesty's justices assembled and acting together at \_\_\_\_\_, do certify on the application of the \_\_\_\_\_ railway company that the sum of £ \_\_\_\_\_, being the whole of the capital prescribed by the said Act (special



or claim to have, any estate or interest in the lands and hereditaments so intended to be taken and purchased by the said *C. D. Sewerage Board* as aforesaid. **Appendix**

Dated this       day of       , one thousand eight hundred and ninety-

To  
and to all and every other } *A. B.*,  
person and persons whom } Clerk to the said *C. D. Sewerage Board*.  
it may concern.

In order to assist you in complying with the provisions of the Act, a schedule of claims, to be filled in and signed by you, is annexed to this notice.

**No. 6A.—FORM OF CLAIM AND PARTICULARS OF ESTATE BY AN OWNER.**

(To accompany last precedent.)

*C.— D.— Sewerage Board.*

Lands in the parishes of

**SCHEDULE OF CLAIM** to be filled in and signed by owners, lessees, and occupiers of property required for the purposes of the above undertaking, under the powers contained in the provisional order contained in the Local Government Board's Provisional Order Confirmation (No. ) Act, 19 , and the Acts of Parliament therein incorporated.

Name and description and place of abode of the party.	Situation and description of property.	Nature of interest, whether owner, lessee, or yearly tenant; and if owner, whether in fee or in tail for life; and if lessee, then for what term or number of years, and of whom held, and at what rent; and generally state all charges and incumbrances affecting such respective estates, whether owner, or lessee, or yearly tenant.	Particulars of claim, and in such particulars distinguish the amount claimed for the value of the land, and the amount claimed for damage by severance or otherwise.

**Appendix.**

**No. 7.—NOTICE TO TREAT FOR AN EASEMENT UNDER A SPECIAL ACT AND UNDER SECTION 18 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 28).**

To A. B. and to all persons having or  
claiming any estate or interest in  
the lands after-mentioned and to all  
others whom it may concern.

Pursuant to and by virtue of the Act, 19 (hereinafter referred to as the special Act) and the Acts and portions of Acts incorporated therewith the mayor aldermen and citizens of the city of (hereinafter referred to as the corporation) hereby give you notice that they require and are authorised to purchase take and acquire in the lands described in the schedule hereto an easement and right for the purpose of constructing placing laying inspecting maintaining cleansing repairing conducting and managing the waterworks by the special Act authorised and that a description of the nature of such easement and right is hereinafter contained under the heads (a) (b) (c) (d) (e) and (f).

- (a) The easement and right in perpetuity of at any time or times constructing placing and laying and of thereafter using inspecting maintaining cleansing repairing replacing and relaying conducting and managing an aqueduct as hereinafter defined in sub-section (d) in through upon under or over the lands described in Part I. of the said schedule together with all necessary proper and convenient works which the corporation may construct under the powers of the special Act in connection with the said waterworks and with all rights of entry from time to time expedient for the purposes aforesaid and for the purposes aforesaid the corporation may exercise the powers of the special Act and the several Acts and several portions of Acts incorporated therewith and also (without prejudice to the foregoing) the easement and right of depositing surplus material and spoil upon the lands described in Part II. of the said schedule together with such rights of entry and passage as may be necessary for making such deposit.
- (b) The corporation in constructing the aqueduct other than the several wells etc. hereinafter mentioned in sub-section (d) (4) (except in crossing streams or rivers) are to lay aside so much of the productive soil and afterwards to replace the same uppermost on the land from whence such soil shall have been taken as will restore the surface as nearly as practicable to its original level and condition and so that there shall (unless the owner shall notify to the contrary prior to the determination or assessment of the compensation) be at least two feet six inches of cover over the aqueduct except where means of access thereto will be required but this sub-section (b) shall not be applicable to tunnel where the surface is unbroken.
- (c) The corporation shall to the reasonable satisfaction of the owner or his agent reinstate all watercourses fences roads and footpaths which may be crossed injured or interfered with under the powers of the special Act and all land drains severed will be picked up by a new master drain on the high side of the aqueduct and carried to a suitable outfall to the reasonable satisfaction of the owner or his agent.
- (d) The lands required for the said easement and right are shown upon the plans hereto annexed marked respectively A B and C and are as follows :

## Appendix.

Reference to plan.	(1) For conduit or tunnel (coloured yellow upon plan), a width of seven yards.		(2) For lines of pipe (coloured black upon plan), a width of eleven yards.		(3) For conduit or pipes with embankment (coloured blue upon plan).		(4) For wells, etc. (coloured red upon plan).	
	Length in yards.	Aggregate area or thereabouts of statute measure.	Length in yards.	Aggregate area or thereabouts of statute measure.	Aggregate length in yards.	Aggregate area or thereabouts of statute measure.	Aggregate area or thereabouts of statute measure.	Aggregate area or thereabouts of statute measure.
Plan A.	2522½	A. R. P. 3 2 23¼	- -	A. R. P. - - -	68	A. R. P. 0 0 18¼	A. R. P. 0 0 20	
Plan B.	- - -	- - -	521	1 0 29¼	-	- - -	0 1 31¼	
Plan C.	1634½	2 1 18¼	- -	- - -	557	1 0 9½	0 0 1½	
TOTALS	4157	6 0 2	521	1 0 29½	625	1 0 27½	0 2 13	

The aforesaid lines of pipe (not exceeding five in number) to be laid side by side at the same or at different times when and as the corporation may determine.

All which said conduit tunnel lines of pipe wells etc. are in this notice referred to as the aqueduct. As regards the lands described in Part I. of the schedule hereto situate in the townships of and the corporation will deviate from the lines shown upon the parliamentary plans to the extent indicated upon the said plans hereto annexed marked respectively B and C.

- (e) The three sections hereto annexed marked respectively A' B' and C' show by a red line or colour the maximum height to which the aqueduct (inclusive of the aforesaid two feet six inches of cover) will be carried or placed above the natural surface of the ground.
- (f) The corporation will from time to time pay compensation in respect of surface damage which may from time to time arise from the repairing of the aqueduct or laying any additional line of pipe and such payment will be made by the corporation to the person or persons for the time being in occupation of the lands damaged.

Save as herein mentioned the purchase money and compensation under this notice to treat will be in respect of the purchase of the easement and right hereinbefore described and for all damage sustained or to be sustained by the owner by reason of the exercise of the powers of the special Act and the Acts and portions of Acts incorporated with the special Act.

And the corporation hereby demand from you the particulars of your estate and interest or estates and interests in the said lands and of the claims made by you in respect of the purchase of the said easement and right by the corporation in manner aforesaid and they require you to specify the nature of your estate and interest and whether in fee or for life or other estate or interest in the said lands and also the tenure thereof and in or of what manor or manors respectively situate or held and also the ancient accustomed rents and the fines heriots or other incidents payable in respect thereof and in case of such lands or any part thereof being enfranchised to describe such lands and to specify at what date and by virtue of what instrument the same were enfranchised.

And the corporation hereby give you further notice that they are willing to treat for the purchase of the easement and right hereinbefore described in the said lands described in the said schedule hereto in manner aforesaid

**Appendix.** and as to the compensation to be made to you and to all parties interested for the damage that may be sustained by reason of the premises and the execution of the works authorised by the said special Act and the Acts and portions of Acts incorporated therewith respectively.

And the corporation in case you having a greater interest in the lands described in the said schedule hereto than as tenant at will claim compensation in respect of any unexpired term or interest under any lease or grant of the said lands hereby require you to produce the lease or grant in respect of which such claim is made or the best evidence thereof in your power.

#### THE SCHEDULE ABOVE REFERRED TO.

##### *Part I.*

All those the lands situate in the township of \_\_\_\_\_ in the parish of \_\_\_\_\_ in the county of \_\_\_\_\_ delineated and described in the aforesaid map or plan marked A hereunto annexed and described and comprised in the parliamentary plans and book of reference authorised adopted and referred to in the special Act and therein respectively distinguished by the numbers or figures 1, 1a, 2, 3, 4, 5, 62 and 68 in respect of the aforesaid parish of \_\_\_\_\_.

And also all those the lands situate in the township of \_\_\_\_\_ in the parish of \_\_\_\_\_ in the aforesaid county of \_\_\_\_\_ delineated and described on the aforesaid map or plan marked B hereunto annexed and described and comprised in the said parliamentary plans and book of reference and therein respectively distinguished by the numbers or figures 257, 258, 259, 260, 261, and 263 in respect of the aforesaid parish of \_\_\_\_\_.

And also all those the lands situate in the township of \_\_\_\_\_ in the parish of \_\_\_\_\_ in the aforesaid county of \_\_\_\_\_ delineated and described in the aforesaid map or plan marked C hereunto annexed and described and comprised in the said parliamentary plans and book of reference and therein respectively distinguished by the numbers or figures 79, 80, 100, 102, 103, 105, 106, 107, 110 and 112, in respect of the aforesaid parish of \_\_\_\_\_.

##### *Part II.*

All those the lands situate in the aforesaid township of \_\_\_\_\_ in the aforesaid parish of \_\_\_\_\_ delineated and described in the aforesaid map or plan marked A hereunto annexed and thereon coloured brown and described and comprised in the said parliamentary plans and book of reference and therein respectively distinguished by the number or figure 4 in respect of the aforesaid parish of \_\_\_\_\_.

And also those the lands situated in the aforesaid township of \_\_\_\_\_ in the aforesaid parish of \_\_\_\_\_ delineated and described in the aforesaid map or plan marked B hereunto annexed and thereon coloured brown and described and comprised in the said parliamentary plans and book of reference and therein respectively distinguished by the number or figures 258 in respect of the aforesaid parish of \_\_\_\_\_.

And also all those the lands situate in the aforesaid township of \_\_\_\_\_ in the aforesaid parish of \_\_\_\_\_ delineated and described in the aforesaid map or plan marked C hereunto annexed and thereon coloured brown and described and comprised in the said parliamentary plans and book of reference and therein respectively distinguished by the numbers or figures 102, 103, 105, 110, 112 in respect of the aforesaid parish of \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ one thousand nine hundred and \_\_\_\_\_.

By Order,

J. K.

Town Clerk.

*Extract from the Act, 19 .*

**Appendix.**

SECTION .—The corporation may, in lieu of acquiring any lands in the counties of                      and                      , or either of them (other than the lands required for the new reservoir by this Act authorised to be constructed in the township of                      in the county of                      ), acquire such easements and rights in such lands as they may require for the purpose of constructing, placing, laying, inspecting, maintaining, cleansing, repairing, conducting, or managing the waterworks by this Act authorised, and may give notice to treat in respect of such easements and rights, and may in such notice describe the nature thereof, and the several provisions of the Lands Clauses Consolidation Act, 1845, inclusive of those with regard to arbitration and the summoning of a jury, shall apply to such easements and rights as fully as if the same were lands within the meaning of such Act: Provided always, that nothing herein contained shall authorise the corporation to acquire by compulsion any such easement in any case in which the owner in his particulars of claim shall require the corporation to acquire the lands in respect of which they have given notice to treat for the acquisition of an easement only, and every notice to treat for the acquisition of an easement shall be endorsed with notice of this proviso.

Corporation may acquire easement only in certain cases.

NO. 8.—CLAIM BY OWNER AND PARTICULARS OF ESTATE IN REPLY TO LAST PRECEDENT AND SIGNIFICATION OF DESIRE TO HAVE THE AMOUNT OF COMPENSATION SETTLED BY ARBITRATION UNDER SECTION 23 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 49).

To the mayor aldermen and citizens of the city of                      and to all others whom it may concern.

I, A. B., of                      in the county of                      , having received a notice from you the said mayor aldermen and citizens bearing date the                      day of                      19                      demanding from me the particulars of my estate and interest or estates and interests in certain lands hereditaments and premises therein mentioned and in which you require to purchase take and acquire an easement and right for the purposes of the                      Act 19                      as specified in the said notice and as regards the lands described in Part I. of the Schedule to the said notice situate in the township of                      and                      that the corporation would deviate from the line shown upon the parliamentary plans to the extent indicated upon the plans annexed to that notice marked respectively B and C and demanding from me the particulars of my estate and interest or estates and interests in the said lands and of the claims made by me in respect of the purchase of the said easement and right by the corporation and requiring me to specify the nature of my estate and interest and whether in fee for life or other estate or interest in the said lands and also the tenure thereof Now I do hereby give you notice that I claim an estate of freehold for and during the life of C. D. in all the said lands tenements hereditaments and premises mentioned and referred to in the said notice And I hereby give you further notice that you have no right under the said                      Act or otherwise to acquire without my consent any easement or right for the purposes described in the said notice under the heads (a) (b) (c) (d) (e) and (f) and referred to as the aqueduct in over or upon the lands described in the said notice situate in the townships of                      and                      in the line of the proposed deviation of the aqueduct as described in the said notice and plan which consent has not been applied for and has not been given And I hereby further give you notice that I claim the sum of                      for the purchase of the easement or right over such of the lands described in Part I. of the said notice and plan as you are authorised to take and

**Appendix.** acquire without my consent for the purposes of the aqueduct And that I claim compensation at the rate of \_\_\_\_\_ per acre and so in proportion for any less quantity than an acre for the land described in the second part of the schedule to the said notice and plan over which you propose to take and acquire an easement or right for the purpose of depositing surplus material and spoil thereon and for the rights of entry and passage necessary for making such deposit And I hereby give you notice that unless you the said mayor aldermen and citizens agree to pay the sum of money above claimed it is my desire that the amounts to be paid to me in respect of the above claims shall be settled by arbitration in the manner prescribed by the Lands Clauses Consolidation Act 1845.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .  
 \_\_\_\_\_ (Signed)

For forms under ss. 22 and 24, see those under s. 121, *post*.

**No. 9.—NOTICE BY OWNER OF DESIRE TO HAVE COMPENSATION SETTLED BY ARBITRATION UNDER SECTION 23 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 49).**

To the mayor, aldermen, and burgesses of the town of \_\_\_\_\_ and to all others whom it may concern.

Whereas I, the undersigned A. B., have received from you a certain notice, dated the \_\_\_\_\_ day of \_\_\_\_\_, demanding from me the particulars of my estate and interest in certain lands and hereditaments therein described, and of the claim made by me in respect thereof. Now I do hereby send you the said particulars in the schedule hereto, and give you notice that unless you are willing to agree to pay to me the said sum of £ \_\_\_\_\_, I desire to have the amount of purchase money and compensation to be paid by you for my estate and interest in the said land and hereditaments, and the amount of compensation for damage to be sustained by me by reason of the severing of the lands taken from my other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the \_\_\_\_\_ Improvement Act, 19 \_\_\_\_\_, and the Acts incorporated therewith, settled by arbitration in the manner prescribed by the Lands Clauses Consolidation Act, 1845.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .  
 \_\_\_\_\_ (Signed)

**SCHEDULE.**

**No. 10.—NOTICE BY OWNER TO PROMOTERS OF DESIRE FOR ARBITRATION AND REQUEST TO PROMOTERS TO APPOINT AN ARBITRATOR PURSUANT TO SECTION 25 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 53).**

**Main Sewerage Board.**

Whereas by a certain notice under the hand of \_\_\_\_\_ the clerk to you, the said \_\_\_\_\_ Main Sewerage Board, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, we are informed that you, the said board, require to take and use for the purposes of your undertaking in the said notice mentioned, the eighty pieces or parcels of lands and hereditaments delineated on the map or plan annexed to such notice, and thereon edged pink containing in the whole six hundred and sixty acres or thereabouts, part thereof numbered respectively 1 to 77 (inclusive), being in the parish of \_\_\_\_\_ in the county of \_\_\_\_\_, and the

## Appendix.

remaining part thereof numbered respectively 1, 2, and 3, being in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, which lands and hereditaments are in the said notice stated as reputed to belong to us or some or one of us, or in which we or some or one of us claim to have some estate and interest. And we are also required by the said notice to deliver a statement in writing of the particulars of our several estates and interests in such parcels of lands and hereditaments. And whereas by another notice also under the hand of the said \_\_\_\_\_, as clerk to your board, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, one thousand nine hundred and \_\_\_\_\_, and received by us on the \_\_\_\_\_ day of \_\_\_\_\_, one thousand nine hundred and \_\_\_\_\_, we are informed that it is your intention, after the expiration of ten days from the service thereof, to cause a jury to be summoned in pursuance of the provisions of the Lands Clauses Consolidation Act, 1845, and other Acts incorporated therewith, for settling the amount of compensation to be paid by the said board to us for our interest in the said lands and hereditaments belonging to us, and the damage that may be sustained by us by reason of the execution of the works of the said board, and for that purpose to issue your warrant to the sheriff of the said county of \_\_\_\_\_, requiring him to summon a jury accordingly. Now we, the undersigned \_\_\_\_\_ and \_\_\_\_\_ inform you, the said board, that the said lands and hereditaments were devised to us as trustees by the last will and testament of \_\_\_\_\_, and that under the provisions of the said will we have power, with the consent of the \_\_\_\_\_, to sell the said lands and to convey the same to the purchaser thereof for an estate in fee simple of inheritance, and that we claim as compensation for the purchase money for the same and for the damage that may be sustained by reason of the execution of your works, the sum of \_\_\_\_\_ pounds. And take notice that we are ready and willing on payment of the said sum of \_\_\_\_\_ pounds to sell, convey, and to release to you the said main sewerage board, all our estate, right, title, and interest in the said lands and hereditaments according to the provisions contained in the Acts of Parliament and provisional order in your said notice mentioned.

And further, take notice that if our said claim of \_\_\_\_\_ pounds as and for compensation as aforesaid shall not be paid or accepted by you, we hereby, in pursuance of the provisions contained in the said Acts and provisional order, or in any other Act or Acts of Parliament, signify to you our desire to have the amount of the said compensation to be paid to us settled by arbitration, and we hereby require you, the said board, to appoint an arbitrator to act on your behalf in the matter of the said arbitration,

As witness our hands this \_\_\_\_\_ day of \_\_\_\_\_ one thousand nine hundred and \_\_\_\_\_.

(Signed)

NO. 11.—APPOINTMENT OF ARBITRATOR BY A COMPANY AT REQUEST OF OWNER UNDER SECTION 25 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 53).

Whereas by a certain notice under the hand of *A. B.*, of \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_ we are required to appoint an arbitrator to act on behalf of the \_\_\_\_\_ Company in the matter of an arbitration under the Lands Clauses Consolidation Act, 1845, to determine the amount of purchase money and compensation to be paid by the company for the interest which the said *A. B.* claims to be entitled to in the lands and hereditaments described in the schedule hereto, and also the amount of damage (if any) to be sustained by the said *A. B.* by reason of the severing of the lands taken from the other lands of the said *A. B.* or otherwise injuriously affecting such other lands by the exercise of the power of the said Act. Now, therefore,

**Appendix.** we, the                      Company, appoint *C. D.*, of                      , Esquire, civil engineer and surveyor, to be arbitrator on their behalf in the matter of the said arbitration.

Dated this                      day of                      19 .  
(Signed)

Secretary to the                      Company.

#### SCHEDULE.

**No. 12.—APPOINTMENT OF AN ARBITRATOR BY AN OWNER, PURSUANT TO SECTION 25 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 53).**

In pursuance of the                      Act, 19                      , and the Public Acts therewith incorporated, I                      of                      by this writing under my hand appoint                      , of                      , surveyor and valuer, to be my arbitrator, to act for me and on my behalf to settle and determine the purchase money and compensation to be paid to me for and in respect of the purchase by the Company of the estate and interest which I, the said                      as aforesaid, am or claim to be entitled to sell to the said company in the lands and hereditaments situate in                      , in the parish of                      , in the county of                      , comprised in a certain notice to treat given by the said company to me the said                      , and dated the                      day of                      , 19                      . And also the compensation to be paid by the said company in respect of the damage, injury, or loss (if any) which I, the said                      as aforesaid, may sustain by reason of the taking of the said lands and hereditaments and the execution of the works authorised by the first above-mentioned Act. And also, as such arbitrator on my part and behalf, to do all such other acts as are required by the said first above-mentioned Act or any Acts incorporated therewith.

Dated the                      day of                      19                      .  
(Signed)

**No. 13.—NOTICE TO OWNERS OF APPOINTMENT OF ARBITRATOR AND REQUEST TO OWNERS TO APPOINT AN ARBITRATOR PURSUANT TO SECTION 25 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 53).**

#### Sewerage Board.

To                      and                      , Esquires, trustees of the last will and testament of                      .

Whereas the                      Sewerage Board did on or about the                      day of                      receive a notice in writing from you, dated the                      day of                      signifying your desire that if your claim of                      pounds as and for compensation as hereinafter mentioned should not be paid or accepted by the said                      Sewerage Board, hereinafter called "the said sewerage board," the amount of the said compensation to be paid to you should be settled by arbitration, and requiring the said sewerage board to nominate and appoint an arbitrator on their behalf for the purposes of settling by arbitration in the manner prescribed by the Lands Clauses Consolidation Act, 1845, and other Acts (if any) incorporated therewith the amount of compensation to be paid by the said sewerage board for your interest in certain lands and hereditaments situate in the parishes of                      , in the county of                      , and                      , in the county of                      , and in the said notice mentioned or referred to as belonging to you as trustees of the above-named                      , and for the damage that may be sustained by you by reason of the execution of the works of the said sewerage board.

## Appendix.

And whereas in pursuance of the requirements of such notice as aforesaid the said sewerage board did at their meeting held on the       day of       , nominate and appoint       of       , in the said county of       , land agent and surveyor, to be an arbitrator on the part of the said sewerage board for the purpose and in the matter of the said arbitration.

Now, therefore, the said sewerage board, in pursuance of the provisions of the said Lands Clauses Consolidation Act, 1845, and other Acts (if any) or provisional order in this behalf, themselves having appointed such arbitrator as aforesaid, do hereby request and require you to nominate and appoint an arbitrator to act on your behalf for the purposes and in the matter of the said arbitration.

As witness my hand this       day of       , one thousand nine hundred and      

By order of and for the said sewerage board,

(Signed)

Clerk to the said

Main Sewerage Board.

NO. 14.—APPOINTMENT OF ARBITRATOR TO ACT FOR BOTH PARTIES, BY ONE PARTY ON FAILURE OF APPOINTMENT BY OTHER PARTY, UNDER SECTION 25 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 53).

Whereas under the provisions of the       Act and of the Acts incorporated therewith the       Company on the       day of       19       , gave notice to me, the undersigned *A. B.*, of       in the county of       , that they required for the purposes of their undertaking certain lands and hereditaments described in the said notice and delineated on the plan annexed thereto, and whereas before the said company had issued their warrant to the sheriff of the said county to summon a jury in respect of the matter of the said lands I signified to them, by notice in writing, my desire to have the amount of compensation payable to me for my estate and interest in the said lands and hereditaments settled by arbitration; and whereas, by writing under my hand on the       day of       19       , I appointed *C. D.*, of       , land agent and surveyor, to be arbitrator on my behalf to determine the amount of purchase money and compensation to be paid by the said company for my estate and interest in the said lands and hereditaments, or the interest therein which I am enabled to sell and convey under the said Acts, and also the amount of damage (if any) to be sustained by me by reason of the severing of the land taken from my other lands, or otherwise injuriously affecting such lands by the exercise of the powers of the said Acts; and whereas on the       day of       19       , I gave notice in writing to the said company of the said appointment, and requested them within fourteen days from the date of the said notice to appoint an arbitrator to act on their behalf in the said matters; and whereas fourteen days have elapsed since the time of the said notice and request, and the said company have failed to appoint an arbitrator to act on their behalf. Now, therefore, I appoint *O. P.*, of       , land agent and surveyor, to act both on my behalf and on behalf of the said company in the matters aforesaid.

Dated the       day of       19       .

(Signed)       *A. B.*

SCHEDULE.

**Appendix.** NO. 15.—APPOINTMENT OF A SINGLE ARBITRATOR BY AGREEMENT  
PURSUANT TO SECTION 25 OF THE LANDS CLAUSES CONSOLIDATION  
ACT, 1845 (*ante*, p. 53).

Whereas under the provisions of the                      Acts or some or one of them and of the Acts incorporated therewith *A.* (the promoters) and *B.* (the owner) have agreed to determine the amount of purchase money and compensation to be paid by the said *A.* to the said *B.* for his interest in certain land and hereditaments required by the said *A.* for the purposes of their undertaking and described in the schedule hereto, and for injury sustained by other land of the said *B.* by reason of the exercise of the powers of the said Acts. Now, therefore, we, the said *A.* and I the said *B.*, do concur in appointing *C. D.* to be a single arbitrator to determine the amount of purchase money and compensation to be paid by the said *A.* for the interest of the said *B.* in the said land and hereditaments or the interest therein which the said *B.* is enabled to sell under the said Acts, and also the amount of damage sustained and to be sustained by reason of the severing of the lands taken from other lands of the said *B.*, and by reason of such other lands being injuriously affected by the exercise of the powers of the said Acts and also for damage done to such other lands.

Dated this                      day of                      .

(Signed)

(Signed)

SCHEDULE.

NO. 16.—APPOINTMENT OF UMPIRE BY ARBITRATORS UNDER SECTION 27  
OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 57).

**Sewerage Board.**

Whereas I, the undersigned *F. G.*, of                      , in the county of                      , land agent and surveyor, have been duly appointed an arbitrator on the part of *A. B.*, *C. D.*, and *E. H.*, trustees of the last will and testament of *O. P.*, and I, the undersigned *H. I.*, also of                      aforesaid, land agent and surveyor, have been duly appointed an arbitrator on the part of the                      Sewerage Board for the purpose of settling by arbitration, in pursuance of the powers and provisions contained in and conferred by a provisional order included in the Local Government Board's Provisional Orders Confirmation (No.                      ) Act, 19                      , in the manner prescribed by the Lands Clauses Consolidation Act, 1845, and the other Acts (if any) incorporated therewith, the amount of purchase money and compensation to be paid by the                      Sewerage Board for the interest belonging to the said *A. B.*, *C. D.*, and *E. H.* in the lands and hereditaments mentioned in certain respective notices in writing bearing date the                      day of                      19                      , and given by the said                      Sewerage Board to the said *A. B.*, *C. D.*, and *E. H.*, their interest in the said lands and hereditaments, and for the damage that may be sustained by the said *A. B.*, *C. D.*, and *E. H.* by reason of the execution of the works of the said sewerage board. Now therefore, we, the said *F. G.* and *H. I.*, do hereby, before we enter upon the matters referred to us as above mentioned, nominate and appoint *X. Y.*, of                      London, land agent, to be an umpire between us to decide on any such matters on which we shall differ or which shall be referred to the said *X. Y.* under the provisions of the said Lands Clauses Consolidation Act, 1845, or the Acts (if any) incorporated therewith or provisional order relating to the said sewerage board and included in the Local Government Board's Provisional Orders Confirmation (No.                      ) Act, 19                      .

As witness our hands this                      day of                      19                      .

(Signed)

*F. G.*

*H. I.*

## Appendix.

As witness our hands this                      day of                      , 19                      .  
(Signed)

### SCHEDULE.

Dated this       day of       19       .  
(Signed)       A. B.

**Appendix.**

NO. 20.—ENLARGEMENT OF TIME FOR MAKING AWARD, PURSUANT TO SECTION 31 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 60).

We            the arbitrator appointed by and on behalf of the above-named  
and            the arbitrator appointed by and on behalf of the above-named company, do hereby in execution of the powers for this purpose given to us by the Lands Clauses Consolidation Act, 1845, extend the time by the same Act appointed for making our award concerning the question of disputed compensation arisen under the            Act, 19           , and other matters referred to us until the            day of            now next ensuing.

As witness our hands this            day of           , 19           .  
(Signed)

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NO. 21.—NOTICE BY ARBITRATORS OF FAILURE TO AGREE, PURSUANT TO SECTION 31 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 60).

To O. P.

In the matter of an Arbitration between A.B., of           , and the Company.

We, the undersigned W. X. and Y. Z., hereby give you notice that we are unable to agree in respect of the matters referred to us by the said A. B. and the            Company, and that the determination of the said matters has thereby devolved upon you as umpire, duly appointed by us on the            day of            19           .

The            day of            19           .

(Signed)            W. X.  
   Y. Z.

---

NO. 22.—FORM OF OATH FOR A WITNESS OR PARTY BEFORE AN ARBITRATOR UNDER SECTION 32 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845, OR UNDER THE ARBITRATION ACT, 1889 (*ante*, p. 61).

The evidence you shall give touching the matters in question shall be the truth, the whole truth and nothing but the truth. So help you God.

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NO. 23.—SCOTCH FORM OF OATH FOR A WITNESS OR PARTY BEFORE AN ARBITRATOR.

[*The witness holds up his right hand, and repeats the oath after the arbitrator, no book is used.*]

I swear by Almighty God [as I shall answer to God at the Great Day of Judgment] that I will speak the truth, the whole truth, and nothing but the truth.

This form may be used in England if the party so desire (Oaths Act, 1888, s. 5).

The part in brackets is now omitted by some Scotch judges.

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Appendix.

No. 24.—AFFIRMATION FOR A WITNESS OR PARTY BEFORE AN ARBITRATOR WHERE WITNESS OBJECTS TO BE SWORN, UNDER THE OATHS ACT, 1888.

[*The witness should repeat the affirmation after the arbitrator.*]

I, *A. B.*, do solemnly, sincerely and truly declare and affirm that the evidence I shall give touching the matters in question shall be the truth, the whole truth, and nothing but the truth.

For forms of oaths for persons belonging to other religions, and in the case of interpreters, see Stringer on Oaths.

No. 25.—AWARD BY TWO ARBITRATORS IN WRITING UNDER SECTION 35 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 67).

To all to whom these presents shall come, *L. M.*, of \_\_\_\_\_, and *N. O.*, of \_\_\_\_\_, send greeting.

Whereas on the \_\_\_\_\_ day of \_\_\_\_\_ the mayor, aldermen, and burgesses of the town of \_\_\_\_\_ gave notice to *A. B.*, that in pursuance of the powers of the \_\_\_\_\_ Street Widening Act, 19\_\_\_\_, and the Acts incorporated therewith, they required to purchase and take certain lands and hereditaments [*here insert description of lands from notice to treat*]. And whereas, the said *A. B.* claimed to be interested in the said lands and hereditaments under a lease for \_\_\_\_\_ years, dated the \_\_\_\_\_ day of \_\_\_\_\_, 188\_\_\_\_, of which a term of about fifteen years was then unexpired. And whereas no agreement has been come to as to the amount of purchase money and compensation to be paid by the said mayor, aldermen, and burgesses for the interest claimed by the said *A. B.*, in the said lands and hereditaments, and also the amount of damage to be sustained by him, or by the exercise of the powers of the said Acts. And whereas, the said mayor, aldermen, and burgesses on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, appointed by writing under their common seal, *L. M.*, as arbitrator, to act on their behalf in the determination of the amount of the said purchase money and compensation. And whereas the said *A. B.* on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, appointed in writing under his hand the said *N. O.*, as arbitrator, to act on his behalf in the determination of the amount of the said purchase money and compensation. And whereas we, the said arbitrators, before entering upon the consideration of the matters referred to us duly appointed an umpire, and made and subscribed the declaration required by the said Acts. Now know ye, that we, the said arbitrators, having viewed the said land and hereditaments, and having considered the evidence adduced by the said respective parties do award and determine that the sum of £ \_\_\_\_\_ is the amount of purchase money and compensation to be paid by the said mayor, aldermen, and burgesses for the interest claimed by the said *A. B.*, in the said lands and hereditaments, and that the said sum includes an amount for all damages sustained or to be sustained by the said *A. B.* by reason of the severing of the lands taken from his other lands or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts.

As witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
(Signed) *L. M.*  
*N. O.*

SCHEDULE.

**Appendix.****No. 26.—AWARD BY AN UMPIRE.**

To all to whom these presents shall come.

I , of , surveyor and valuer, send greeting.

Whereas by the Act, 19 , with which are incorporated the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, as amended by the Lands Clauses (Umpire) Act, 1883, and the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Act, 1863, the Company (hereinafter called the said company) were authorised to take, for the purposes of the said Act, the land and hereditaments situate in the parish of , in the county of , mentioned, numbered, and otherwise described in the schedule to the notice to treat next hereinafter referred to and delineated in the plan thereto annexed, and which are comprised in the plan and book of reference thereto deposited with the clerk of the county council for the said county of .

And whereas by a notice to treat under the hand of , secretary to the said company, dated the day of , one thousand nine hundred and , the said company gave notice in writing to of , that they required to purchase or take all the lands and hereditaments contained in the schedule to the now recited notice to treat with the appurtenances, and demanded from him particulars of his estate and interest in the said lands and hereditaments, and of the claims made by him in respect thereof. And that the said company were willing to treat for the purchase of the said lands and hereditaments, or his estate or interest therein, and as to the compensation to be made for the damage that might be sustained by reason of the execution of the works of the said company. And whereas in pursuance of the last-mentioned notice the said , by writing dated the day of , one thousand nine hundred and three, under the hand of , gave notice to the said company that the said lands and hereditaments were part of the [glebe of the vicarage] of , and that he was entitled to the same as [vicar of ] aforesaid, and that he claimed compensation for the value of the said lands and hereditaments so to be taken as aforesaid, and for damage which would be sustained by him by reason of the execution of the works of the said company. And whereas the said and the said company did not agree as to the amount of purchase money and compensation to be paid to the said , and thereupon a question of disputed compensation arose between the said and the said company. And whereas the said and the said company did not concur in the appointment of a single arbitrator to whom the said dispute should be referred. And whereas the said on or about the day of , one thousand nine hundred and , duly nominated and appointed by writing under his hand of , in the said county of , surveyor, to be the arbitrator on his behalf to whom the question of such compensation as aforesaid should be referred. And whereas the said company on or about the day of , one thousand nine hundred and , duly nominated and appointed by writing under the hand of , the secretary of the said company, of , land agent, to be the arbitrator on behalf of the said company, to whom the question of such compensation as aforesaid should be referred. And whereas the said arbitrators before they entered into the consideration of any of the matters so referred to them as aforesaid respectively, duly made and subscribed, in the presence of a justice of the peace duly authorised in that behalf, the declaration required by the before-mentioned Acts. And whereas the said arbitrators, before they entered upon the matters so referred to them, did on the day of , one thousand nine hundred and , by writing under their hands, duly nominate and appoint me, the before-mentioned , to be the umpire in the matter of the said arbitration. And whereas the said

arbitrators took upon themselves the burthen of the reference and duly heard and considered the allegations and proofs of the said , and the said company respectively, concerning the amount of the said compensation. And whereas the said arbitrators disagreed and differed respecting the matters referred to them, and by reason of such differences between them failed to make their award within twenty-one days after the day on which the last of the said arbitrators was appointed, whereby the matters referred to the said arbitrators aforesaid duly came before me as umpire for determination.

## Appendix.

Now know ye that I, the said , having taken upon myself the burthen of the reference, and having before entering upon or taking into consideration any of the matters referred to me duly made and subscribed, in the presence of a justice of the peace duly authorised in that behalf, the declaration required by the said Acts, which said declaration is hereunto annexed, and having been attended by the parties and their witnesses, and having heard and considered the allegations and proofs of the respective parties, and having viewed the said lands and hereditaments, do make this, my award in writing, of and concerning the premises in the manner following ; that is to say :

I do award, settle, order, and determine that the sum of is the amount of purchase money and compensation to be paid by the said company to the said in respect of the estate and interest of the said in the lands and hereditaments described in the said notice to treat and required to be purchased and taken by the said company as aforesaid and for all damage to be sustained by the said by reason of the execution of the works of the said company.

As witness my hand this day of one thousand nine hundred and

Signed and published by the  
said on the day and  
year last above-mentioned }  
in the presence of  
solicitor.

No. 27.—NOTICE BY PROMOTERS OF INTENTION TO HAVE A JURY SUMMONED AND OFFER OF COMPENSATION UNDER SECTION 38 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 73).

## C. D. Sewerage Board.

Lands in the parishes of , and in the counties of .

In pursuance and exercise of the powers and provisions contained in and conferred by a provisional order included in "The Local Government Board's Provisional Orders Confirmation (No. ) Act, 19 ." and in and by the Lands Clauses Consolidation Act, 1845, and the other Acts of Parliament incorporated with the said Acts, and relating to the C. D. Sewerage Board, or in and by any other Acts of Parliament.

To A. B. and the trustees of the late , namely, and , owners in fee or reputed owners in fee of the lands and hereditaments hereinafter referred to.

Whereas the said C. D. Sewerage Board (hereinafter called "the said sewerage board") did, by a notice in writing bearing date the day of , 19 , duly served on you, give you notice that in execution of the powers and provisions contained in the Lands Clauses Consolidation Act, 1845, and the other Acts of Parliament and provisional orders relating to the said sewerage board, including "The Local Government Board's Provisional Orders Confirmation (No. ) Act, 19 ," the said sewerage board

**Appendix.**

required to purchase the lands and hereditaments therein mentioned and delineated and described in the map or plan thereunto annexed, and situate in the several parishes of , in the county of , and in the county of , and the said sewerage board did thereby demand from you the particulars of your estate and interest in such lands and hereditaments, or any part thereof, and of the claims made by you in respect thereof.

And whereas you have failed to state any particulars of your claim or claims in respect of the said lands and hereditaments, or to treat with the said sewerage board in respect thereof.

Now this is to give you notice, that it is the intention of the said sewerage board, after the expiration of ten days from the service hereof, to cause a jury to be summoned in pursuance of the provisions of the said Lands Clauses Consolidation Act, 1845, and other Acts incorporating the same or incorporated therewith for settling the amount of compensation to be paid by the said sewerage board to you or each of you for the interest in the said lands and hereditaments belonging to you, and the damage that may be sustained by you by reason of the execution of the works of the said sewerage board, and for that purpose to issue their warrant to the sheriff of the said county of requiring him to summon a jury accordingly.

And this is to give you further notice, and to state that the said sewerage board are willing to give the sum of £ ( pounds) for the interest in the said lands and hereditaments belonging to you and sought to be purchased by the said sewerage board from you as aforesaid, and for the damage that may be sustained by you by reason of the execution of the works of the said sewerage board.

As witness my hand this day of , 19 .  
Y. Z.,

Solicitor and clerk to the said Sewerage Board.

NO. 28.—WARRANT TO SHERIFF TO SUMMON A JURY TO DETERMINE THE PURCHASE MONEY PURSUANT TO SECTION 39 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 74).

*C. D. Company.*

Lands in the parish of , and in the county of .

In pursuance and exercise of the powers and provisions contained in and conferred by the [*special*] Act, 19 , and in and by the Lands Clauses Acts. To sheriff of .

Whereas the *C. D. Company* by a notice dated the day of 19 , and duly served upon *A. B.*, of , did give notice that in execution of the powers and provisions contained in the Lands Clauses Acts and the [*special*] Act, 19 , the said company required to purchase and take the lands and hereditaments mentioned in the column of the schedule hereto, and situate in the parishes of in the county of , as mentioned in the column of the said schedule; and whereas the said *A. B.* by a notice addressed to the said company and dated the day of 19 , stated that he claims to be interested in the said lands and hereditaments as mentioned in the column of the said schedule, and that he also claims compensation for injury to be done to other lands held therewith as stated in the column to the said schedule; and whereas the said company and the said *A. B.* have been unable to agree as to the amount of purchase money and compensation to be paid to the said *A. B.* in respect of his estate and interest in the said lands and hereditaments and for the injury to be done to the said lands held therewith by reason of the exercise of the powers in the said Acts contained, and the same has become a question of disputed compensation; and whereas the said company have given notice

to the said *A. B.* of their intention to cause a jury to be summoned to determine the said question of disputed compensation, which notice was served on the       day of       , 19       , being not less than ten days from the date hereof, and which notice stated the sum of money the said company were willing to give for the interest of the said *A. B.* in the said lands and hereditaments and for the damage to be sustained by him by the execution of the works. Now, therefore, we, the said company in pursuance of the said Acts by this warrant under our common seal, issued to you the sheriff of the said county of       hereby require you to summon a jury in accordance with the directions and provisions contained in the said Acts for the purpose of determining by their verdict the amount of the purchase money and compensation to be paid to the said *A. B.* for the purchase of his said estate or interest in the said lands and hereditaments, and also the amount of the compensation to be paid to the said *A. B.* for the injury (if any) done or to be done to the said *A. B.* in respect of the severing of the said lands and hereditaments from the other lands of the said *A. B.* held therewith, or for otherwise injuriously affecting such other lands by reason of the execution of the works by the said company by the exercise of the powers contained in the said Acts.

Given under the common seal of the *C. D.* Company this       day of       , 19       .

(L.S.)

#### SCHEDULE.

#### NO. 29.—NOTICE OF TIME AND PLACE OF INQUIRY TO BE GIVEN BY THE PROMOTERS OF THE UNDERTAKING PURSUANT TO SECTION 46 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 81).

To *A. B.*

Whereas by a notice dated the       day of       , 19       , the *C. D.* Company gave you notice of their intention to cause a jury to be summoned to determine the amount of the purchase money and compensation payable to you for your interest and estate in the lands and hereditaments mentioned therein, and for the compensation payable to you for the injury (if any) done or to be done to you by reason of the severance of the said lands and hereditaments from other lands held therewith and for otherwise injuriously affecting the same; and whereas the *C. D.* Company issued their warrant to the sheriff of       on the       day of       requiring him to summon a jury to determine the amount of the purchase money and compensation payable to you in respect thereof, now the said *C. D.* Company hereby give you notice that the inquiry by a jury to determine the same will be held on the       day of       , 19       , at       o'clock at       .

(Signed)       *X. Y.*,  
Secretary to the *C. D.* Company.

#### NO. 30.—NOMINATION OF A SURVEYOR BY TWO JUSTICES UNDER SECTION 59 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 94).

Whereas the       Company, the promoters of the undertaking authorised by the       Act, 19       , and Acts incorporated therewith, have applied to us, the undersigned *W. X.* and *Y. Z.*, being two of his Majesty's justices of the peace for       to nominate a surveyor, and have proved to our satisfaction that *A. B.* is, by reason of his absence from the kingdom, prevented from treating as to the amount of purchase money or compensation to be paid to



Now, therefore, I hereby appoint *C. D.*, of \_\_\_\_\_, civil engineer, as arbitrator on my behalf to determine whether the amount so deposited as aforesaid by the said local board or district council is a sufficient sum, or whether any and what further sum ought to be paid or deposited by them. Appendix.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .  
(Signed) *A. B.*

#### SCHEDULE.

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#### NO. 33.—DEMAND FOR JURY WHEN LANDS HAVE BEEN TAKEN PURSUANT TO SECTION 68 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 110).

To the *A. B.* Railway Company and to all others whom it may concern.

Whereas in exercise of the powers contained in the *A. B.* Railway Company's Act, 19 \_\_, and the Acts incorporated therewith, you have entered upon and taken for the execution of the works in the said Act authorised a certain close or parcel of land mentioned and described and referred to in the plans and books of reference deposited with the clerk of the peace of the county council of \_\_\_\_\_, and referred to in the said Act, and which said close or parcel of land is therein numbered \_\_\_\_\_, and is more particularly described in the schedule hereto. And whereas I am the owner in fee simple of the said close or parcel of land and you have not made satisfaction to me for the same under the provisions of the said Acts and the Acts incorporated therewith, and I claim as compensation in respect of the said close or parcel of land the sum of £ \_\_\_\_\_.

Now I hereby give you notice that unless you are willing to pay to me the said sum of £ \_\_\_\_\_ and to enter into a written agreement for that purpose within twenty-one days after the receipt of this notice, I desire to have the amount of compensation to be paid to me to be settled by a jury in the manner provided by the Lands Clauses Acts, and I require you within twenty-one days after the receipt of this notice to issue your warrant to the sheriff to summon a jury to settle the same.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .  
(Signed) *X. Y.*

SCHEDULE describing the land referred to in the notice.

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#### NO. 34.—DEMAND FOR ARBITRATION WHEN LANDS HAVE BEEN INJURIOUSLY AFFECTED, PURSUANT TO SECTION 68 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 110).

To the mayor, aldermen, and burgesses of the town of \_\_\_\_\_, and to all others whom it may concern.

Whereas I, *A. B.*, of \_\_\_\_\_, am the owner in fee simple of certain lands and hereditaments described in the schedule hereto; and whereas the said lands and hereditaments have been injuriously affected by the execution of certain works carried out by you under the provisions of the \_\_\_\_\_ Improvement Act, 19 \_\_, and the Acts incorporated therewith, in the manner following, that is to say [*state nature of injury*], and I claim as compensation in respect of the said injury the sum of £ \_\_\_\_\_.

**Appendix.** Now, therefore, I give you notice that unless you are willing to pay the said sum of £ , and enter into a written agreement for that purpose within twenty-one days after the receipt of this notice, I desire to have the amount of the compensation to be paid to me settled by arbitration in the manner provided in the Lands Clauses Acts.

(Signed) A. B.

SCHEDULE describing the lands and hereditaments referred to in the preceding notice.

**No. 35.—DEMAND FOR ARBITRATION WHEN LANDS HAVE BEEN INJURED AND MATERIALS REMOVED IN THE MAKING OF WATERWORKS, PURSUANT TO SECTION 12 OF THE WATERWORKS CLAUSES ACT, 1847 (ante, p. 354), AND SECTION 68 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (ante, p. 110).**

To the mayor aldermen and citizens of the city of , and to all others whom it may concern.

Whereas in exercise of the powers contained in Act, 19 , and the Acts and portions of Acts incorporated therewith you have entered upon certain closes or parcels of land mentioned and described or referred to in the plans and books of reference deposited with the clerk of the county council of the county of and referred to in the said Act and also in the schedule hereunder written and have therein or thereunder proceeded to make construct lay down and maintain an aqueduct conduit or line of pipes as in the said Act is mentioned and to make spoil banks and side cuttings thereon and therein or on or in parts thereof and have obtained therefrom sand stone gravel and other materials for the construction of the said aqueduct conduit or line of pipes whereby the said lands and the mines and minerals thereunder have been damaged and injuriously affected. And whereas you have not made satisfaction to me for the damage which has been or may be sustained by me by reason of the execution of the said works. Now I, A. B., of in the county of being entitled to an estate of freehold (for and during the life of ) as lord of the several manors in which the said lands are respectively situate and being as such lord entitled to the stone slate clay sand gravel and other minerals within or under the same do hereby in pursuance of the statutes in that case made and provided give you the said corporation notice that I require you to pay me compensation in respect of the said lands and the mines and minerals thereunder which you have damaged and injuriously affected and in respect of the stone slate clay sand gravel and other minerals taken therefrom and in respect of my estate or interest therein respectively and that the amount of my claim for compensation by reason of the premises is £ . And further take notice that unless you are willing to pay to me the said sum of £ and shall enter into a written agreement for that purpose within twenty-one days after the receipt by you of this notice then it is my desire that the amount of compensation to be paid to me by you by reason of the premises shall be ascertained by arbitration according to the provisions of the Act or Acts of Parliament in that case made and provided. And if you fail to pay me the said sum of £ or to enter into such written agreement as aforesaid within the said twenty-one days then and in that case I do hereby request and require you to nominate and appoint an arbitrator to act on your behalf in the matter of the said arbitration.

Witness my hand this day of one thousand nine hundred and .

(Signed) A. B.

## THE SCHEDULE hereinbefore referred to.

## Appendix.

Parish.	Township.	Tenure, etc.	Numbers on Parliamentary Plan and on Book of Reference.
—	—	Customary -	13, 18, 21, 22, 23, 24, 25, 27, 29, 32, 33, 34, 36, 38, 39, 40, 45, 46, 48, 49, 51, 61, 66, 67, 75, 79, 80, 86, 87, 92.
—	—	Enfranchised -	54, 58, 59, 70, 73, 73b, 91.
—	—	Freehold formerly common.	136, 138, 140, 142, 146, 152, 154, 158, 159, 160.

NO. 36.—DEED POLL VESTING LANDS IN PROMOTERS ON FAILURE OF OWNER TO MAKE A GOOD TITLE, PURSUANT TO SECTION 75 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 170).

To all to whom these presents shall come.

We, the Company, send greeting. Whereas under the powers and provisions contained in the [*special*] Act, 19 , and the Acts therewith incorporated, the said company gave notice to A. B., of , that they required to purchase and take the lands mentioned in the schedule hereto for the purposes authorised by the said Act ; And whereas the sum of £ has been determined as between the said A. B. and the said company by the verdict of a jury, pursuant to the provisions of the said Acts, to be the purchase money or compensation to be paid in respect of the fee simple of the said lands by the said company. And whereas the said company, pursuant to the provisions contained in the said Acts, have deposited the said sum of £ in the Bank of England with the privity of his Majesty's Paymaster-General, for and on behalf of the Supreme Court of Judicature, to be placed to his account to the credit of A. B.'s account. And whereas the said A. B., under the powers and provisions contained in the said Acts, is enabled to sell and convey the fee simple of the said lands and has consented to the said company entering upon and taking the said lands, but has failed to adduce a good title to such lands to the satisfaction of the said company. And whereas the said company have taken the lands from the said A. B., now these presents witness that we, the said company, hereby declare that the said A. B. has failed to adduce a good title to such lands to our satisfaction. And we, the said company, execute this deed poll under our common seal pursuant to the provisions in the said Acts contained with the intent that all the estate and interest in the said lands of, or capable of being sold and conveyed by the said A. B. shall vest absolutely in us, the said company, and that in respect of the said lands as against the said A. B. and all parties on behalf of whom he is by the said Acts enabled to sell and convey, we the said company shall be entitled to immediate possession.

Sealed, etc.

## THE SCHEDULE.

The above form will serve as an example of the similar deed polls which promoters may execute under sections 77, 97, 107, 109, 111, 113, and 117 of the Lands Clauses Consolidation Act, 1845.

**Appendix.** No. 37.—APPOINTMENT OF SURVEYOR BY TWO JUSTICES UNDER SECTION 85 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 205).

Whereas it has been made to appear to us, the undersigned *W. X.* and *Y. Z.*, being two of his Majesty's justices of the peace assembled and acting together at \_\_\_\_\_, that the \_\_\_\_\_ Company, the promoters of the undertaking authorised under the \_\_\_\_\_ Act and the Acts incorporated therewith, are desirous of entering upon and using lands [described in the schedule hereto and in a notice to treat dated, etc.], which they are empowered to purchase before an agreement shall have been come to or an award made or verdict given for the purchase money or compensation to be paid by them in respect of such lands. And whereas the said company have applied to us to appoint a surveyor under section 85 of the Lands Clauses Consolidation Act, 1845, to determine the value of such lands or the interest therein which can be sold or conveyed. Now, therefore, we in pursuance of the powers vested in us do hereby appoint *M. N.* to be the surveyor to determine the value of such lands or the interest therein which *A. B.* mentioned in the said notice to treat has or is enabled to sell and convey, and also the amount of compensation to be paid by them in respect of such lands.

Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_  
(Signed) *W. X.*  
*Y. Z.*

SCHEDULE.

No. 38.—NOTICE OF INTENTION TO APPLY TO BOARD OF TRADE TO APPOINT A SURVEYOR UNDER THE RAILWAY COMPANIES ACT, 1867, s. 36 (*ante*, p. 442), WHICH AMENDS AS REGARDS RAILWAYS SECTION 85 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 205).

To *A. B.*

Whereas by a certain notice in writing under the hand of the secretary of the \_\_\_\_\_ Railway Company, dated the \_\_\_\_\_ day of \_\_\_\_\_, and served upon you on the \_\_\_\_\_ day of \_\_\_\_\_, the said company gave you notice that they required to purchase and take under the powers of the Railway Act, 19\_\_\_\_, and the Acts incorporated therewith certain lands and hereditaments [*insert description of the lands from the notice to treat*]. And whereas no agreement has been come to or award made, or verdict given for the purchase money or compensation to be paid by the said company in respect of your interest in the said lands and hereditaments. And whereas the said company are desirous of entering upon and using the said lands and hereditaments for the purposes of their undertaking under the powers conferred upon them by the Lands Clauses Acts. Now we, the said company, hereby give you notice that we intend on the \_\_\_\_\_ day of \_\_\_\_\_ next, being not less than seven days from the service upon you of this notice, to apply under section 36 of the Railway Companies Act, 1867, to the Board of Trade for the appointment of a surveyor to determine the value of the interest claimed by you, or which you are under the said Acts enabled to sell, in the said lands and hereditaments and the amount of all damage and injury to be sustained by reason of the exercise of the powers conferred upon us by the 85th section of the Lands Clauses Consolidation Act, 1845, as far as such damage and injury are capable of estimation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.  
(Signed) \_\_\_\_\_  
Secretary to the \_\_\_\_\_ Railway Company.

No. 39.—APPLICATION TO BOARD OF TRADE BY A RAILWAY COMPANY FOR APPOINTMENT OF A SURVEYOR UNDER SECTION 36 OF THE RAILWAY COMPANIES ACT, 1867 (*ante*, p. 442), AND SECTION 85 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 205). Appendix.

To his Majesty's Commissioners for Trade and Foreign Plantations, commonly called the Board of Trade.

Whereas the Company are desirous under the provisions of the Act, 19 , with which are incorporated the Lands Clauses Consolidation Act, 1845, and of the Railway Companies Act, 1867, of entering upon and using certain lands which they are by the said first-mentioned Act empowered to enter upon, take, and use, and which are comprised in the copy notice to treat hereunto annexed, and are situate in the parish of , in the county of , and of which particulars are contained in the schedule to the said notice, and which are delineated and described in the plan attached to the said notice, and are thereon respectively coloured red, which notice was served upon A. B., of on the day of 19 .

And whereas the said A. B. claims to be interested in the said lands, and the said company propose under and subject to the powers and provisions of the said Acts to enter upon and use the same for the purposes of the said first-mentioned Act before any agreement shall have been come to or award made or verdict given for the purchase money or compensation to be made by them in respect of such lands, and to deposit in the bank by way of security according to the provisions of the Lands Clauses Consolidation Act, 1845, such a sum as shall be determined by a surveyor appointed by you under the provisions of the Railway Companies Act, 1867, to be the value of the said lands or of the interest therein which the said A. B. is entitled to or enabled to sell and convey.

And whereas the said does not consent to such entry and user by the said company as aforesaid, and notice of the intention to apply to you for the appointment of a surveyor has been given to him not less than seven days prior to the date hereof, now, therefore, the said company hereby apply to you to nominate and appoint under the provisions of the said Acts a surveyor to determine the value of the said lands.

Dated this day of one thousand nine hundred and .  
Signed on behalf of the Company,  
Secretary to the said company.

The four following forms are issued by the Board of Trade :

No. 40.—APPOINTMENT OF SURVEYOR BY BOARD OF TRADE UNDER SECTION 85 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 205), AND SECTION 36 OF THE RAILWAY COMPANIES ACT, 1867 (*ante*, p. 442).

Whereas it has been made to appear to the Board of Trade that the Company are empowered to purchase certain lands in the parish of , in the county of , being the portion coloured on the plan annexed to the notice to treat, dated the day of 19 , and addressed to (copies of which plan and notice are annexed hereto), and that the said company are desirous of entering upon and using the said lands notwithstanding that no agreement has been come to, nor award made nor verdict given for the purchase money or compensation to be paid by them in respect of the said lands. And whereas the said company in pursuance of the 36th section of the Railway Companies Act, 1867, have applied to the Board of Trade to appoint a surveyor to make the valuation prescribed

**Appendix.** by the 85th section of the Lands Clauses Consolidation Act, 1845, in respect of the said lands.

Now, therefore, the Board of Trade in pursuance of the powers in them vested, do hereby nominate and appoint of to be the surveyor to determine the value of the said lands hereinbefore described or of the interest therein which the said is entitled to or enabled to sell and convey, including the amount of compensation for all damage and injury (if any) to be sustained by reason of the exercise of the powers conferred by the said 85th section as far as such damage and injury are capable of estimation, and do require and direct said to proceed in respect of such valuation in the manner prescribed in the 59th, 60th, 61st, 62nd, and 63rd sections of the Lands Clauses Consolidation Act, 1845.

Signed by order of the Board of Trade this  
day of , 19 .

An assistant secretary of the Board of Trade.

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**NO. 41.—DECLARATION OF IMPARTIALITY BY A SURVEYOR APPOINTED UNDER SECTION 85 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 205).**

I, , of , surveyor, do solemnly and sincerely declare that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

Made and subscribed in the presence of

Justice of the peace.

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**NO. 42.—VALUATION BY A SURVEYOR APPOINTED UNDER SECTION 85 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 205).**

I, the undersigned being the surveyor named in the foregoing nomination to determine the value of the lands in the said nomination mentioned, and having made my valuation concerning the same, and having previously to entering on the duty of making such valuation subscribed the declaration contained at the foot of the said nomination, do hereby determine the value of the said lands at the sum of .

Dated this day of

19 .

Witness.

(Signed)

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**NO. 43.—DECLARATION OF CORRECTNESS OF VALUATION BY A SURVEYOR APPOINTED UNDER SECTION 85 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 205).**

I, the above-named , do hereby declare the foregoing valuation to be correct, and that it includes compensation for all damage and injury to be sustained by reason of the exercise of the powers conferred by section 85 of the Lands Clauses Consolidation Act, 1845, as far as such damage and injury are capable of estimation.

Witness.

(Signed)

Appendix.

No. 44.—BOND WITH SURETIES TO BE EXECUTED WHEN THE PROMOTERS OF THE UNDERTAKING DESIRE TO ENTER AND USE LAND BEFORE PURCHASE, PURSUANT TO SECTION 85 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 205).

Know all men by these presents, that we, the                      Company, and A. B., of                      , and C. D., of                      [*add if the parties have differed, being sureties approved of by two justices, or, in the case of railways, by the Board of Trade*], are jointly and severally held and firmly bound to X. Y., of                      , in the sum of £                      [*insert the amount to be deposited*]. For which payment well and truly to be made to the said X. Y., we, the said company, bind ourselves and our successors. And we the said A. B. and C. D. bind ourselves and each of us, and the heirs, executors, and administrators of ourselves and each of us respectively, firmly by these presents.

Sealed with the common seal of us the said                      company, and with the respective seals of us, A. B. and C. D.

Dated the                      day of                      19                      .

Whereas the said company under the powers and provisions contained in the [*special*] Act, 19                      , and the Acts or portions thereof incorporated therewith, have served a notice upon the said X. Y., dated the                      day of

that they require for the purposes of the undertaking, by the said Acts authorised, to purchase and take the lands and hereditaments described in the schedule hereto, and particularly delineated on the plan hereto annexed and thereon coloured red. And whereas the said X. Y. is entitled to sell and convey the fee simple of the said lands and hereditaments, but no agreement has been come to or an award made, or verdict given for the purchase money or compensation to be paid by the said company in respect of the said lands and hereditaments. And whereas the said company are desirous of entering upon and using the said lands and hereditaments before an agreement has been come to or an award made or verdict given in respect of the said purchase money and compensation, but the said X. Y. does not consent to such entry.

And whereas a surveyor appointed by two justices pursuant to the said Acts has determined the value of the fee simple of the said lands and hereditaments to be a sum of £                      , and the said company has by way of security deposited the said sum of £                      in the Bank of England, with the privy of his Majesty's Paymaster-General, for and on behalf of the Supreme Court of Judicature to be placed to his account to the credit of an account "*Er parte* the                      company. The account of X. Y."

Now the condition of the above written bond or obligation is such that if the said company or A. B. or C. D. shall pay to the said X. Y. or deposit in the Bank of England [for the benefit of the parties interested in the said lands or hereditaments] (*a*) under the provisions in the said Acts contained, of all such purchase money or compensation, as may in manner in the said Acts provided be determined to be payable by the said company in respect of the said lands and hereditaments, together with interest thereon at the rate of five pounds *per centum per annum* from the time of entering on such lands, until such purchase money or compensation shall be paid to the said X. Y. or deposited in the Bank of England [for the benefit of the parties interested in such lands] (*a*) under the provisions in the said Acts contained, then the above written bond or obligation shall be void otherwise the same shall remain in full force.

(*a*) These words may be omitted if the owner has a particular interest only, see *ante*, p. 210.

## Appendix.

No. 45.—COUNTER-NOTICE BY AN OWNER OR LESSEE OF A HOUSE OR OTHER BUILDING OR MANUFACTORY UNDER SECTION 92 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 219).

To the mayor, aldermen, and citizens of the city of .

Whereas on the       day of       , 19       , notice was served upon me by the mayor, aldermen, and citizens of the city of       , to the effect that they required to take for the purposes of the improvements to be carried out under the       Act, 19       , certain messuages and hereditaments therein described. And whereas the said messuages and hereditaments are a part only of a house or other building [*or manufactory*]. And whereas I am willing and able to sell and convey the whole thereof [*or any interest in the whole thereof*]. Now, therefore, take notice that I require you to purchase and take the whole of the said house or other building [*or manufactory, or my interest in the whole thereof*].

Dated the       day of       , 19       .

(Signed)       A. B.

No. 46.—NOTICE OF REVOCATION OF NOTICE TO TREAT WHEN THE OWNER HAS GIVEN A COUNTER-NOTICE UNDER SECTION 92 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 219).

To A. B.

Whereas upon the       day of       , a notice was served upon you by the mayor, aldermen, and citizens of the city of       , stating that they required to purchase and take for the purposes of the improvements to be carried out under the       Act, 19       , certain messuages and hereditaments therein described. And whereas you, upon the       day of       did serve upon the mayor, aldermen, and citizens of the city of       a counter-notice requiring them to purchase and take the whole of a certain house or other building [*or manufactory, or the whole of your interest in a certain house or other building or manufactory*], of which the said messuages and hereditaments are a part only, and stating that you were willing and able to sell and convey the whole [*or your interest in the whole*] thereof. Now, therefore, the said mayor, aldermen, and citizens of the city of       , give you notice that they revoke and withdraw the said notice served upon you on the       day of       19       .

Dated the       day of       , 19       .

By Order,  
Town Clerk.

No. 47.—ASSENT TO COUNTER-NOTICE GIVEN UNDER SECTION 92 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 219).

To

The trustees under the will of the }  
late       namely,       }

Whereas the mayor, aldermen, and citizens of the city of       (herein after called "the corporation"), did, by a notice dated the       day of       , give you notice that by virtue and under the authority of the       Improvement Act, 19       , and the Act or Acts or parts of Acts incorporated therewith, the corporation were authorised and required to purchase and take for the purposes of the said Act the lands and hereditaments specified in the schedule to the said notice annexed in which lands

**Appendix.**

and hereditaments you are or are reputed to be interested, or which by the said Acts or some or one of them, you are enabled to sell and convey or release to the corporation. And by the said notice the corporation gave you further notice that they were willing to treat with you for the purchase of the said lands and hereditaments and as to the compensation to be paid to you for the damage that might be sustained by reason of the execution of the said works authorised by the said Act, or for which the said premises were required as aforesaid. And the corporation did thereby demand from you the particulars of your estate and interest in the said lands and hereditaments and of the claims made by you in respect thereof. And whereas by a notice dated the       day of       , and duly served on your behalf upon the corporation, you, the said trustees, gave the corporation notice that the lands and hereditaments so as aforesaid comprised in and described in the hereinbefore firstly-recited notice to treat were a part only of a house or other building or manufactory known as "       ," and that you were willing and able to sell and convey your interest in the whole of the said hereditaments, and by your said notice you required the corporation to purchase and take your interest in the whole of the said house or other building or manufactory. Now, therefore, I, the undersigned clerk of the city of       aforesaid, and solicitor and agent for and on behalf of the corporation do hereby, on behalf of the corporation, give you, the said trustees, notice that the corporation do hereby accept your said notice dated the       day of       and assent to your requirement that they should purchase and take the whole of the said lands and hereditaments referred to in your said notices and known as "       ," situate in or near to       street, and       street in the city of       aforesaid.

Dated this       day of       .

(Signed)

Solicitor for the Corporation and Town  
Clerk of the city of       .

**NO. 48.—NOTICE BY LESSEE TO PROMOTERS OF UNDERTAKING REQUIRING  
THE RENT TO BE APPORTIONED UNDER SECTION 119 OF THE LANDS  
CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 245).**

To       Company.

Whereas by an indenture dated the       day of       , and made between X. Y. [lessor] of the one part and me, the undersigned A. B. of the other part, all [*insert parcels as in lease*] were demised to me for the term of       years from the       day of       , 19       , at a rent of £       , which lands are more particularly delineated on the plan annexed hereto and coloured green and red. And whereas by a notice dated the       day of       , and duly served upon me, the company under the powers contained in the [*special*] Act and Acts therewith incorporated required to purchase and take so much of said demised lands as are coloured red on the plan hereto annexed. Now, therefore, I give you the said company notice that I require that the rent payable in respect of the lands comprised in such indenture of lease be apportioned between the lands so required and the residue of such lands, in accordance with the provisions of the said Acts.

Dated this       day of       , 19       .

(Signed)       A. B.

PLAN.

Appendix.No. 49.—SUMMONS TO APPORTION RENT UNDER SECTION 119 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 245).

To *A. B.* [lessee] and *C. D.* [lessor].

Information has this day been laid before me, *X. Y.*, one of his Majesty's justices of the peace for the county of \_\_\_\_\_ by \_\_\_\_\_ Company, that the said company have by a notice served upon *A. B.*, required under the powers of the [*special*] Act of 19 and the Acts therewith incorporated to purchase and take part of the lands comprised in and demised by an indenture of lease dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and made between the *C. D.* of the one part and the said *A. B.* of the other part, for a term of \_\_\_\_\_ years from the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, which said term is still unexpired, at the yearly rent of £\_\_\_\_\_, and that the said *A. B.* has given notice to the said company that he requires that the rent payable in respect of the lands comprised in such indenture of lease be apportioned between the lands so required and the residue of such lands, and that no agreement has been made in respect of such apportionment.

These are therefore to command you and each of you, in his Majesty's name, to be and appear on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock, at the \_\_\_\_\_ court before such two of his Majesty's justices of the peace as may then be sitting for the purpose of determining such apportionment in accordance with the provisions of the said Acts, and take notice that if you do not appear such apportionment will be made in your absence.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_.

(Signed) \_\_\_\_\_ (L.S.)

Justice of the Peace for the county of \_\_\_\_\_.

No. 50.—APPORTIONMENT OF RENT BY TWO JUSTICES PURSUANT TO SECTION 119 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 245).

At the petty sessions of \_\_\_\_\_, for \_\_\_\_\_ division of the county of \_\_\_\_\_, holden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_.

Whereas [*recite lease and parcels, rent and notice to treat for part of the said lands as in No. 48*]. And whereas no apportionment has been agreed to of the said rent between the land comprised in the said notice and the residue of the lands comprised in and demised by the said indenture of lease. And whereas, upon information laid by the said company, the said *A. B.* and *C. D.* were summoned to appear before us at \_\_\_\_\_ court at the date and hour mentioned in the said summons for the purpose of determining such apportionment. Now, therefore, we, the undersigned, being two of her Majesty's justices of the peace for the county of \_\_\_\_\_ assembled and acting together at \_\_\_\_\_ having heard the evidence adduced by the said *A. B.* and *C. D.* and the said company in pursuance of the power contained in the said Acts, apportion the said yearly rent of £\_\_\_\_\_ as follows, namely, the sum of £\_\_\_\_\_ shall be the yearly rent payable for that part of the lands required by the said company, and the sum of £\_\_\_\_\_ shall be the yearly rent payable for the residue of the said lands comprised in the said indenture of lease.

Given under our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_.

(Signed) \_\_\_\_\_ (L.S.)

Justices of the Peace for the county of \_\_\_\_\_.

No. 51.—NOTICE TO PERSON HAVING NO GREATER INTEREST IN THE LANDS TAKEN THAN AS TENANT FOR A YEAR OR FROM YEAR TO YEAR UNDER SECTION 121 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 246). **Appendix.**

To A. B.

Take notice that the                      Company in pursuance of their powers under the                      Act, 19                      , and the Acts incorporated therewith, require you to give up possession of the lands occupied by you and particularly described in the schedule hereto and coloured red on the annexed plan on the day of                      next, before the expiration of your term or interest therein; and further, that you are entitled to compensation for the value of your unexpired term or interest in such lands and for any just allowance which ought to be made to you by an incoming tenant, and for any loss or injury you may sustain, and [*if a part only of such lands be required*] compensation for the damage done to you in your tenancy by severing the lands held by you, or otherwise injuriously affecting the same, and to have the amount of such compensation determined by two justices if no agreement is come to between you and the said                      Company about the same.

Dated the                      day of                      .

(Signed)

Secretary to the                      Company.

SCHEDULE OF LANDS.

No. 52.—SUMMONS TO APPEAR BEFORE TWO JUSTICES FOR ASSESSMENT OF COMPENSATION PAYABLE TO A YEARLY TENANT UNDER SECTION 121 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845.

In the [*county of*                      . *Petty sessional division of*                      ].

Information has this day been laid before me, one of his Majesty's justices of the peace for the county of                      , by A. B., that you, the Company, did on the                      day of                      , serve a notice on him requiring him to give up possession of certain lands and hereditaments therein described and occupied by him as a yearly tenant, and that no agreement has been made as to the amount of compensation payable to him for the value of his unexpired term or interest in the said lands and hereditaments, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, and [*if a part of such lands be required*] for the damage done to him in his tenancy by severing the lands held by him or otherwise injuriously affecting the same.

You are therefore summoned in his Majesty's name to be and appear on the                      day of                      , at                      o'clock in the forenoon, at                      , before such two of his Majesty's justices of the peace as may then be sitting, in order that the amount of the said compensation may then and there be determined.

Given under my hand and seal this                      day of                      , 19                      .

(Signed)                      (L.S.)

Justice of the Peace for the [*county*] aforesaid.

No. 53.—ASSESSMENT OF COMPENSATION BY TWO JUSTICES OF THE INTEREST OF A YEARLY TENANT UNDER SECTION 121 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*ante*, p. 246).

Whereas the                      Company did on the                      day of                      , in pursuance of the provisions of the                      Act, 19                      [*the company's special Act*], and the Acts incorporated therewith, serve upon A.B. a notice requiring him to give up possession of certain lands and hereditaments therein described and occupied by the said A. B. as a yearly tenant; and whereas no agreement



The following four forms have been adapted from the forms (Nos. 10, 11, 16, and 17) given in the schedule to the Highway Act, 1835, the alterations having been rendered necessary by subsequent legislation :

**Appendix.**

No. 56.—LICENSE FROM JUSTICES FOR A DISTRICT COUNCIL TO DIG, ETC., MATERIALS UPON INCLOSED LANDS FOR THE REPAIR OF HIGHWAYS (*ante*, p. 700).

(To wit.) { To the District Council of  
in the said county.

Whereas by the Highway Act, 1835, the surveyor is authorised to dig, get, take, and carry away materials lying upon any lands or grounds within the parish for which he is appointed for the use and benefit of the highways ; but not without the consent of the occupier or owner of such lands or grounds or his agent, or a license from the justices in sessions assembled ; and whereas by the Local Government Act, 1894, there have been transferred to the district councils all the powers, authorities, duties, and liabilities of surveyors of highways within their district. And whereas it appears to us, his Majesty's justices of the peace of the said county, and acting within the said [district] at sessions assembled, upon the oath of *C. D.*, surveyor [*or clerk*] to the district council, that the said district council have applied to *A. B.*, of , for his consent to dig, get, take, or carry away materials from the lands called or known by the names of and in his occupation [*or of which he is owner, or in the occupation of J. K., or of which J. K. is the owner, and the said A. B. his agent*], within the said [parish, etc.] for the purposes aforesaid, and that the said materials are necessary for the repairs of the highways, and that the said *A. B.* hath refused to permit the same to be dug, got, taken, and carried away, and the said *A. B.* having been duly summoned to appear before us to show cause why such permission should not be granted, and having appeared before us accordingly [*or having sent his steward, or agent, or C. D. on his behalf, to attend us on that occasion, or but not having appeared*], we have heard what has been alleged, and taken the said matter into consideration, and are of opinion that the said materials are necessary and ought to be dug, got, taken, and carried away for the purposes aforesaid. Therefore we do hereby give our license for the said district council to dig, get, take, and carry away the same accordingly, the said district council making satisfaction for the same, and also for the damage done to such lands, in the manner directed by the said Acts.

Given under our hands the day of , one thousand nine hundred and .

*J. P.*

*K. P.*

No. 57.—LICENSE FROM JUSTICES TO GET MATERIALS FOR THE REPAIR OF THE HIGHWAYS IN ANOTHER PARISH BESIDES THAT WHEREIN SUCH MATERIALS ARE TO BE EMPLOYED (*ante*, p. 699).

(To wit.) { At sessions , held at , in the hundred, etc.,  
of , in the said county, by justices of the peace for  
the said county acting within the on the day  
of

It appearing to us, upon evidence this day received, that sufficient materials cannot conveniently be had within the waste land, common grounds, rivers or brooks, nor in the enclosed lands or grounds lying within the [parish, etc.] of , in the said hundred, for the repairs of the highways within the said [parish], nor in the waste lands, common grounds, rivers or brooks within the [parish] of , adjoining the

**Appendix.** said [parish] of , we do hereby give our license to the district council of , in which district is included the parish of , to search for, dig, get, and carry away materials within the enclosed lands or grounds of *C. D.* within the said [parish] of , it appearing from evidence before us that there are proper materials within the said lands for the purposes aforesaid lying convenient to the said highways, and that after such materials shall be so taken there will be sufficient left for the use of the highways within the said parish of , upon the said district council making satisfaction for the same, and also for the damage done to such lands, in the manner directed by the Highway Act, 1835, subject to such restrictions as are therein contained.

Given under our hands the day and year above written.

*J. P.*  
*K. P.*

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**No. 58.—ORDER OF TWO JUSTICES FOR WIDENING OF HIGHWAY**  
(*ante*, p. 701).

(To wit.) { We, , two of his Majesty's justices of the peace for the said county, acting within the of , within the said county, having, upon a view, found that a certain part of the highway between and , in the [parish, etc.] of , in the said [hundred], for the length of yards or thereabouts, and particularly described in the plan hereunto annexed, is for the greatest part thereof narrow, but may be conveniently enlarged and widened by adding thereto, from the lands and grounds of and of the length of yards or thereabouts, particularly described in the plan hereunto annexed, which we think will widen and enlarge the same, and be much more commodious to the public, do hereby order that the said highway be widened and enlarged accordingly, and that the district council for the district of , where the said old highway lies, do forthwith proceed to treat and make agreement with the said and for the recompense to be made for the said ground and for the making such ditches and fences as shall be necessary, in such manner, with such approbation, and by pursuing such measures and directions in all respects as are warranted and prescribed by the Highway Act, 1835; and in case such agreement shall be made as aforesaid, we do order an equal assessment, not exceeding the rate of in the pound, to be made, levied, and collected upon all and every the parties liable to the payment of the highway rate in the said , of , and that the money arising thereupon be paid and applied in making such recompense and satisfaction as aforesaid, pursuant to the directions of the said Act.

*A. B.*  
*C. D.*

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**No. 59.—CERTIFICATE FROM THE SAID JUSTICES TO THE COURT OF**  
**QUARTER SESSIONS** (*ante*, p. 701).

To the justices of the peace at the general quarter sessions to be held at , in the said county, the day of , one thousand nine hundred and .

We, the within named *A. B.* and *C. D.*, do hereby certify to the said court of quarter sessions, that we made and signed the within order, and that with our approbation and by our direction the said district council treated with the said and for the said lands required for the purposes

aforesaid, but was not able to make any agreement for that purpose with them or either of them, and that they tendered to the said the sum of , and to the said the sum of as a recompense for the said ground, and for the making the said ditches and fences which he [or they and each of them] refused to receive.

Appendix.

A. B.  
C. D.

The following Forms are under the Metropolitan Paving Act, 1817, commonly called Michael Angelo Taylor's Act :

NO. 60.—FORM OF ADJUDICATION UNDER MICHAEL ANGELO TAYLOR'S ACT (57 GEO. 3, C. XXIX.), s. 80, BY RESOLUTION (*ante*, p. 719).

Whereas it is desirable to widen so much of X. Street as lies between A. Lane and B. Street, the council do hereby adjudge that the houses, walls, buildings, lands, tenements, and hereditaments, or portions thereof respectively, situate on the side of X. Street, and coloured red on the plan marked D, prevent the widening of the said thoroughfare, and that the possession, occupation, and purchase of the said respective houses, walls, buildings, lands, and hereditaments will be necessary for carrying out the said improvement, and that notices thereof be served upon the several owners and occupiers of all such properties of whatever nature, tenure, kind or quality for the purposes aforesaid, as provided by the statute 57 Geo. 3, c. xxix., and that it be referred to to take such steps as may be necessary to carry the above resolution into effect.

NO. 61.—NOTICE TO TREAT UNDER MICHAEL ANGELO TAYLOR'S ACT (57 GEO. 3, C. XXIX.), s. 80 (*ante*, p. 719).

To A. B. and C. D., and all other the owner or owners, occupier or occupiers of, and all other persons interested in the premises hereinafter mentioned and described.

I, the undersigned, do hereby for and on behalf of the mayor, aldermen, and councillors of the borough of (hereinafter called "the council") who are the persons having the control of the pavements within the said borough, and by direction of the said council give you and each of you notice, that for the improvement of the streets and public places of the said district, and for the public advantage the said council in pursuance of the powers enabling them in that behalf, have resolved forthwith to alter, widen, and extend X. Passage, C. Market, between T. Street and P. Street, and Q. Street, and that the said council have adjudged that the houses, buildings, land, tenements and hereditaments known as Nos. 2 and 3, X. Passage aforesaid, project into, obstruct and prevent the said council from so altering, widening and extending X. Passage aforesaid, and that for such purpose the possession, occupation, and purchase of the same houses, buildings, land, tenements, and hereditaments (which hereditaments are delineated on the plan hereto annexed, and are thereon distinguished by the colour pink) will be necessary, and I do further give you notice, that the said council have employed me on their behalf to treat, contract, and agree with you and each of you and all other the owner or owners, occupier or occupiers of the said hereditaments and premises, Nos. 2 and 3, X. Passage aforesaid, for the purchase thereof, and of the respective estates and interests therein, of all persons seized or possessed thereof or interested therein, or of or in all or any part or parts thereof, and I do hereby demand from you particulars of your estate and

**Appendix.** interest in the said hereditaments and premises and of the claim or claim made by you in respect thereof, and desired that such particulars and claim be forwarded to me at the undermentioned address within twenty-one days from this date.

Dated this            day of            , 19    .

Solicitor to the Council of            .

N.B.—It is requested that the claim be made out on the form herewith:

**No. 62.—PARTICULARS OF CLAIM TO ACCOMPANY PRECEDING NOTICE.**

Name, Description and Abode of Claimants.	Situation and Description of Property.	Nature of Interest.	Particulars of Leases, and Names and Ad- dresses of Occupiers.	Par- ticulars of Claim.	Name and Address of Claimant's Solicitor.	Name and Address of Claimant's Surveyor (if any).

**No. 63.—OFFER BY BOROUGH COUNCIL FOR LANDS FOR WHICH NOTICE TO TREAT HAS BEEN GIVEN UNDER 57 GEO. 3, C. XXIX. (*ante*, p. 719).**

To A. B. and C. D.

Whereas the mayor, aldermen, and councillors of the borough of (hereinafter called "the council") did on or about the            day of            19    , give you two notices in writing under the hand of the solicitor for the said council respectively, dated the            day of            , 19    , that the said council required to purchase the hereditaments and premises described in the said notices being part of the site of the premises formerly known as No. 1, X. Passage, also premises known as Nos. 2 and 3, X. Passage, all or near C. Market, in the county of London, and which hereditaments and premises for the better description thereof were delineated in the plans respectively attached to the said notices, and were thereon distinguished by the colour pink. And further that the said council had employed M. N. of            , their solicitor, to treat with you for the purchase of the said hereditaments and premises. And whereas you have refused to agree with the said M. N. as to the amount of compensation to be paid for the purchase of your estate and interest in the said hereditaments and premises. And whereas by two letters dated respectively the            and            days of            19    , the one being under the hand of the said M. N., and the other under the hands of Messieurs P. Q., your solicitors, it was agreed between you and the council for the said borough of            , that your claims for compensation in respect of the hereditaments and premises comprised in the said two notices shall be treated as one claim. Now take notice that we, the council, do hereby offer you the sum of £            in full satisfaction of your said claim in respect of the hereditaments and premises comprised in the said two notices. And further take notice that unless within fourteen days from the service of this notice upon you, the offer herein contained is accepted by

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you, we shall put in force the powers vested in us by statute to have the amount of compensation to be paid to you for the purchase of your estate and interest in the said hereditaments and premises assessed and awarded by a jury, and that if the jury shall award the same or a less sum than the sum hereby offered, the costs, charges, and expenses of procuring such compensation to be assessed and awarded as aforesaid, and also of assessing and awarding the same will be borne and paid by you.

Given under the common seal of the council, this                      day of                      , 18                      .

The common seal of the                      for the                      was hereunto affixed in the presence of

*M. N.*,  
Clerk of the council.

No. 64.—NOTICE TO LANDOWNERS OF INTENTION TO SUMMON JURY  
UNDER 57 GEO. 3, C. XXIX., s. 82 (*ante*, p. 722).

To *A. B.* and *C. D.*

Whereas the mayor, aldermen, and councillors of the borough of (hereinafter called "the council") who are the persons having the control of the pavements in the said borough for the improvement of the streets and public places in the said borough, and for the public advantage, and in pursuance of the powers enabling them in that behalf, have resolved forthwith to alter, widen, and extend the highway, known as *X. Passage*, *C. Market*, between *C. Street* and *P. Street* in the said borough. And whereas the council have adjudged that the land and hereditaments being part of the site of premises known as *No. 1, X. Passage*, and also premises known as *Nos. 2 and 3, X. Passage*, all near *C. Street* aforesaid, and which land, hereditaments, and premises for the better description thereof were delineated and distinguished by the colour pink on the plans respectively annexed to two certain notices to treat under the hand of the solicitor to the council duly served upon you, and respectively dated the                      day of                      , 19                      , project into, obstruct, and prevent the council from so altering, widening, and extending the said highway, and that for such purpose the possession, occupation, and purchase of the said land, hereditaments, and premises of which you are the owner is necessary. And whereas the council appointed *M. N.*, their solicitor, to treat, contract, and agree with the owners of the land, hereditaments, and buildings adjudged necessary for the alteration, widening, and extension aforesaid, and certain negotiations have taken place between the said *M. N.* and yourselves with a view to the purchase by the council of the said lands and hereditaments. And whereas by two letters dated respectively the                      and                      days of                      , 19                      , the one being under the hand of the said *M. N.*, and the other under the hands of Messieurs *P. Q.*, your solicitors, it was agreed between you and the council that your claim for compensation in respect of all the land, hereditaments, and premises comprised in the said two notices to treat should be treated as one claim. And whereas on the                      day of                      , 19                      , a notice was served on you under the common seal of the council referring to the negotiations which have taken place between the said *M. N.* and yourselves, and intimating that as you had refused to agree the amount of the compensation to be paid to you for the purchase of your estate and interest in the said land, hereditaments, and premises, the council would put in force their statutory powers, unless within the time therein mentioned you came to an agreement with the council in regard to such compensation. And whereas you have still refused to agree to the terms upon which the council are willing to purchase the said land, hereditaments and premises. Now

**Appendix.** this is to give you notice, that the council in pursuance of the powers conferred upon them by the statutes 57 Geo. 3, c. xxix., 18 & 19 Vict. c. 120, and 62 & 63 Vict. c. 14, have resolved to take the steps prescribed by the statute to impanel a jury before the justices of the peace for the county of London at a court of general or quarter sessions to be holden for the said county, and to obtain their verdict and the judgment of the justices in relation to the premises; and I am directed by the council to give you notice that they will at the expiration of fourteen days from the service of this notice in accordance with the statutes in that behalf, issue their warrant or precept to the sheriff of the county of London, to impanel, summon, and return a jury at such court of quarter sessions for the purpose of obtaining such verdict and the judgment of the justices in relation to the premises.

Dated the            day of            , 19 .

*M. N.*,  
Clerk to the council.

**No. 65.—FORM OF WARRANT TO SHERIFF TO SUMMON A JURY, PURSUANT TO 57 GEO. 3, C. XXIX., S. 82 (*ante*, p. 722).**

To the sheriff of the county of London.

County of        } Whereas the mayor, aldermen, and councillors of the  
London to wit. } borough of        (hereinafter called "the council")  
who are the persons having the control of the pavements in the said borough, for the improvement of the streets and public places in the said borough, and for the public advantage and in pursuance of the powers enabling them in that behalf, have resolved forthwith to alter, widen and extend the highway known as X. Passage, C. Market, between C. Street and P. Street in the said district, and the council have duly adjudged that the land and hereditaments being part of the site of premises, known as No. 1. X. Passage, and also premises, known as Nos. 2 and 3, X. Passage, all near C. Street aforesaid (and which land, hereditaments, and premises for the better description thereof were delineated and distinguished by the colour pink on the plans respectively annexed, to two certain notices to treat under the hand of the solicitor to the council, duly served upon A. B. and C. D., and respectively dated the        day of 19        ), project into, obstruct, and prevent the council from so altering, widening, and extending the said highway, and that for such purpose the possession, occupation, and purchase of the said land, hereditaments, and premises of which the said A. B. and C. D. are the owners, is necessary.

And whereas, the council appointed *M. N.*, their solicitor, to treat, contract, and agree with the owners of the land, hereditaments, and buildings adjudged necessary for the alteration, widening, and extension aforesaid, and certain negotiations have taken place between the said *M. N.* and the said A. B. and C. D., with a view to the purchase by the council of the said land and hereditaments.

And whereas, by two letters dated respectively the        and        days of        , 19        , the one being under the hand of the said *M. N.* and the other under the hands of Messrs. P. and Q., solicitors for the said A. B. and C. D., it was agreed between them and the council that the claims of the said A. B. and C. D. for compensation in respect of all the land, hereditaments, and premises comprised in the said two notices to treat should be treated as one claim.

And whereas the said A. B. and C. D., being persons possessed of or otherwise interested in the said land, hereditaments, and premises have not agreed with the council or with any person or persons authorised by them

for the sale and conveyance to the council of the estate and interest of the said *A. B.* and *C. D.* **Appendix.**

Now, therefore, we, the council do, by this our warrant or precept issued under and by virtue and in pursuance of the powers and authorities for that purpose given by the statutes 57 Geo. 3, c. xxix., 18 & 19 Vict. c. 120, and 62 & 63 Vict. c. 14, and of every other power enabling us in this behalf, hereby authorise, direct, and require you to impanel, summon, and return a competent number of substantial and disinterested persons qualified to serve on juries not less than 48 or not more than 72—out of which persons so to be impanelled, summoned, and returned a jury of 11 men are to be drawn by some indifferent person, to be by the council appointed in such manner as juries for the trial of issues joined in his Majesty's High Court of Justice, are by the Juries Act, 1825, or by any statute or statutes altering or amending the same, directed to be drawn, which said persons so to be impanelled, summoned, and returned, are hereby required to come and appear before the justices of the peace for the said county at the court of quarter sessions of the peace to be holden by adjournment from the day of            last at the            in and for the said county of London on the            day of            19    , at 10 of the clock in the forenoon precisely, and to attend such court of quarter sessions from day to day until discharged by the said court and the said jury are then upon their oaths to enquire of the value of the said land, hereditaments, and premises being part of the site of premises known as No. 1, X. Passage, also premises known as Nos. 2 and 3, X. Passage, all near C. Street aforesaid, and of the proportionable value of the respective estates and interests of all and every person and persons seised or possessed thereof or interested therein, or of or in any part or parts thereof with whom the council may have failed to agree. And also to assess and award the sum or sums of money to be paid to such person or persons, party or parties respectively, for the purchase of the said land, hereditaments, and premises and of such respective estates and interests therein, and also for goodwill, improvements, or any injury or damage whatsoever that may affect any such person or persons, party or parties, either as leaseholders or tenants at will and otherwise as directed by the 82nd section of the said Act of 57 Geo. 3, c. xxix.

Witness our common seal this            day of            19    .



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